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Intended for the professional workers with the deaf as well as for members of the legal profession, the text considers problems, including interpretation, that the deaf may have in cooperating with the legal system. Specific areas of legal concern covered include the following: contracts and relationships, injuries and accidents, criminal offenses, and governmental and administrative matters. (JD)

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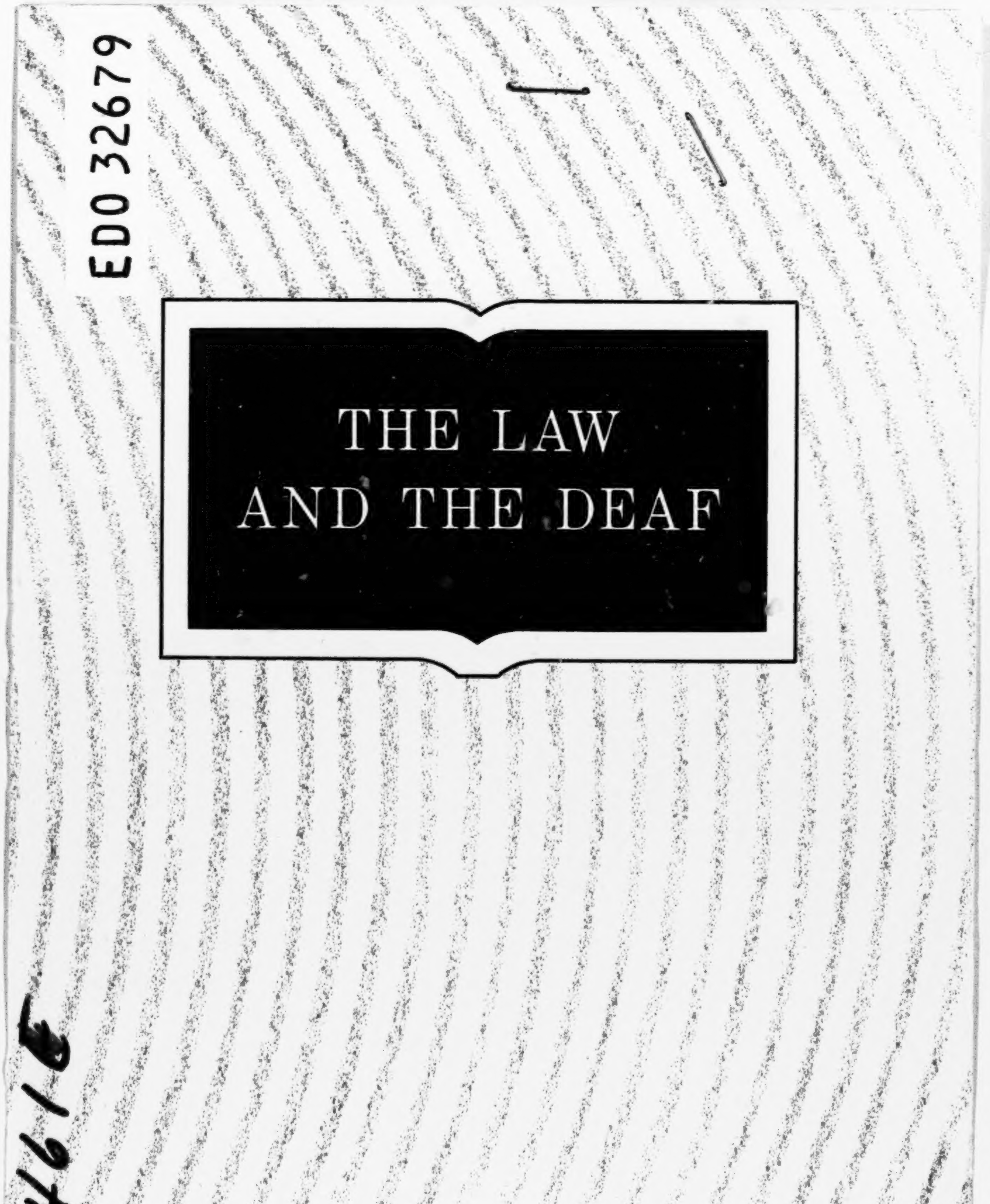

THE LAW AND THE DEAF

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The Law and the Deaf

By Lowell J. Myers, J.D.
Attorney at Law

Edited by Max Friedman
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The idea for this first book on the subject of law as it applies to the deaf was conceived by Dr. Ray L. Jones of San Fernando Valley State College and Dr. Boyce R. Williams, consultant on the deaf and the hard of hearing in the Vocational Rehabilitation Administration of the U.S. Department of Health, Education, and Welfare.

LOWELL J. MYERS
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SECTION 1

Introduction

This book was written to be used in training persons who plan to become professional workers with the deaf, or who are presently engaged in this activity; and for use by lawyers, judges, and other members of the legal profession.

Since law touches upon almost every aspect of human behavior, a study of the legal problems of the deaf provides excellent insight into the actual problems that the deaf encounter in attempting to adjust to our complex present-day society.

In the case of *Barnett* v. *Barnett* (1 Jones Eq., 54 N.C. 221), the Supreme Court of North Carolina said:

> In the earlier history of the law a person who was born deaf and dumb was considered to be an idiot.

Happily, this is no longer true. The education of the deaf has undergone astounding improvement. With proper education, the deaf have come a long way toward assuming their rightful places as useful and productive members of society. They now occupy distinguished positions in almost every branch of the arts, sciences, and professions. This great improvement in their economic and social position has naturally been followed by appropriate changes in their legal status. A deaf person is no longer considered an idiot in the eyes of the law.

The exact number of deaf persons in this country cannot be stated with any degree of precision because so much depends upon the standard of classification that is used. Surveys have shown that at least 5 percent of the entire population suffers from some degree of hearing loss. The percentage is particularly high among elderly persons and those who work in occupations where they are subjected to unusually loud noises.

Deafness naturally cuts across every level of society and may affect every type of person. It includes persons from every age level, every race, every occupation, and every level of education. Since it cuts across the entire class of humanity and every type of individual is represented, it is difficult to make any general statement about the deaf that will be completely accurate. Almost every general statement will have numerous exceptions.

Deafness is caused by a wide range of factors. Many persons are born deaf. Others become deaf at an early age due to childhood illnesses. Injuries, occupational factors, brain conditions, and various diseases may produce deafness; and in a large number of cases deafness develops without any ascertainable cause. In many cases the disease or injury that causes deafness will also cause some other physical defect. Cases of multiply handicapped deaf persons are becoming more numerous.

A person who has been deaf from birth or early childhood is basically quite different from one who becomes deaf in later life. A person who becomes deaf in infancy enters a silent world before acquiring the fundamental language skills that are the foundation for all future education. He is cut off from many of the most important and fundamental experiences of life. To give such a child even a rudimentary understanding of language and communication is an immensely difficult task which can be accomplished only by many years of intensive effort by experts in that field. To the physical handicap is thus added a great potential weakness in the use of language (reading, writing, and speaking) and in the ability to use and understand abstract ideas.

For some deaf people, in fact the deaf people whom we cite frequently as examples in sections 1 and 2, the physical handicap and low educational level may also be complicated by an unusual pattern of emotional and psychological reactions. The matter is well explained in the following excerpt from the American Annals of the Deaf:

> A sensory deprivation limits the world of experience. It deprives the individual of a portion of the natural resources from which the mind and personality develop. Inasmuch as total experience is reduced there is an imposition on the equilibrium of all psychological processes. When hearing is lacking it alters the integration and functioning of the other sensory processes. Experience is constituted differently; the world of perception, conception, imagination, and thought has an altered foundation, a new configuration. These statements are not mere speculation because scientific evidence regarding the importance of a sensory deprivation for learning and adjustment is being accumulated in many centers throughout the world. While these findings cannot be reviewed here, the guidance counselor must be cognizant of the fact that research is indicating that it is more difficult for abstract intelligence to develop normally when deafness is present from early life, that the stress deriving from impaired hearing causes wholesome emotional adjustment to be more difficult to achieve, that deafness is a handicap which causes greater dependence on others, and that the limitation in communication which results greatly increases the difficulties of understanding and relating to other people.
>
> ("Guidance and Counseling for the Deaf," by Helmer R. Mykelbust, Ed. D., Arthur Neyhus, Ph. D., and Ann M. Mulholland, M.A.; American Annals of the Deaf, vol. 107, No. 4., p. 371.)

An excellent introduction to the entire field will be found in the book, "The Psychology of Deafness" by Edna Simon Levine, Ph. D., Columbia University Press, 1960.

Persons who became deaf at an early age and have never fully developed communication skills are sometimes unfortunately called deaf-mutes by the general public. The label is offensive to deaf people because of the negative connotation it has acquired.

The term mute is not strictly accurate because the typical deaf person does not have any physical defect in his speaking mechanisms and also has acquired some degree of speech. His need to be taught to speak is due to the fact that he cannot hear others speak and consequently cannot learn speech through imitation as hearing persons do. His situation may be likened to a blind person trying to draw a picture. He will generally be unable to do so, although there is nothing wrong with his hands, because he cannot determine what is needed and cannot judge accurately what he is doing.

Most deaf persons do have some hearing and speaking abilities, although they may be so limited as to be almost useless for practical matters. Also most deaf persons do have reading and writing skills adequate for the exchange of thinking. The fairly common deficiencies for deaf people in these fundamentals of communication are manifestations of early onset of the disability. They are the continuing challenge to the teacher, the puzzle to the psychologist who recognizes the normal mentality behind the language limitations.

The term deaf is generally used to indicate those who cannot understand connected discourse through the ear, with or without a hearing aid, and must depend on their eyes to receive communications. Those who have a hearing loss but can understand speech through the ear, with or without the help of a hearing aid, are generally termed hard of hearing. For the purposes of this book we are primarily concerned with the persons who are described in the first definition, those who are deaf, who have a very-severe-to-total break in normal communication channels. It has been estimated that there are about 200,000 such persons in the Nation. It is among the poorly educated and emotionally involved of this class that the most difficult problems arise and these are usually the ones most in need of professional help. It is upon this minority of deaf people that these opening remarks focus.

As with the undereducated, normally hearing population, such deaf persons are often unable to handle their own legal problems. Because of the communication problem or unawareness of the help they need, they generally are reluctant to consult an attorney in the usual manner. If they do consult an attorney, he may find it so difficult to communicate with them that he will refuse to accept their case. This minority of deaf people, therefore, usually bring their legal problems to social workers, rehabilitation counselors, teachers of the deaf, ministers to the deaf, and other professional people who are trained to work with the deaf, are able to communicate with them in the language of signs, and understand their written and spoken language limitations.

The legal problems of the deaf are often much more complicated than those of normal persons. Moreover, the laws that apply to the deaf are often different from those that apply to persons with normal hearing. Professionals who work with the deaf and aid them with their legal problems therefore frequently need some kind of a practical guide to help them in their work.

A knowledge of the specialized laws that apply to the deaf is needed by persons who are studying to become administrators and leaders in this field. Lawyers and judges also need to be able to find the special legal principles that apply to the deaf without having to search through many thousands of volumes of law reports. The important State statutes concerning the deaf need to be collected in one place so that legislative bodies, organizations of the deaf, and groups working for the deaf will be able to determine what laws concerning the deaf have already been passed in the various States of the Nation. This is a great aid in developing improved statutes and enacting new ones. There is a real need for a bridge between the deaf and the laws under which they live. It is hoped that this text will form a part of that bridge.

SECTION 2

Counseling Problems of the Deaf

Crucial Role of Communication

When any man is involved in a lawsuit or a legal proceeding, he may (from his viewpoint) be dragged against his will into court. When he is deaf, he must sit there and watch other people make arguments that he cannot hear, about problems that he may not understand, using a special procedure that he may not comprehend, to arrive at a result about which he may not even be told. He may feel completely lost in court, not understanding what is wrong, what he is supposed to do, and why things must be done in a particular way.

Legal problems generally represent a conflict between one person and another. But, because of the communication problem, the opposing viewpoint is often never explained to the deaf person, and so he frequently does not understand at all why the conflict exists. He may be aware only of his own viewpoint, and none other. A great deal of trouble can be avoided in legal cases involving the deaf if a special effort is made to help the deaf person understand the opposing viewpoint in the language of signs or in writing that reflects his language skills. The entire nature of the conflict then becomes much clearer to him.

The explanations can be made most effectively by someone who is thoroughly familiar with the deaf and who knows their manual and written language habits. Even such a person may have great difficulty in trying to explain complicated legal principles to a deaf person who has a limited educational background just as he may have for a normally hearing person who has only elementary education.

Hearing and deaf persons of limited education frequently do not understand the difference between a city ordinance, a state statute, and a federal act of Congress. They confuse the Federal Social Security Act with the state unemployment compensation law. They often think that if they are discharged in a case in traffic court (a criminal proceeding) this means that they cannot be sued for damages in a civil suit. This is not true, of course, since the criminal case does not affect the civil case. Two different legal systems are involved here. The lack of adequate communication may make it extremely difficult for the deaf person to comprehend the true nature of his legal problems, while the normally hearing person of comparable limited education may gain some insight simply because he hears enough of the proceedings to understand the situation.

For example, a deaf person who is a Catholic may be under the impression that it is legally impossible for him to obtain a divorce under any circumstances. He confuses religious law with civil law. His normally hearing peer would probably have picked up this difference through his hearing. It sometimes happens that a deaf person incorrectly has someone else arrested for an act which is not actually criminal but only gives rise to a suit for damages. When this happens, the deaf man himself becomes liable to a suit for false arrest; but he cannot understand why this is so until it is explained by a qualified interpreter or worker for the deaf. His hearing peer may make the same mistake but it may be more easily rectified.

This basic lack of understanding of our legal system creates many problems for all people. Deafness increases the difficulty of handling such problems since accurate communication is essential and the highly specialized kind necessary for many deaf people may not be readily available.

Interpretation

When a professional counselor finds that it is necessary to discuss legal problems with a deaf person, he must be sure that the problem is explained in such a manner that the deaf person understands it and can take some reasonable action in regard to it. He should secure an expert interpreter if he has reason to believe that his written or signed language is not entirely meaningful to the deaf person. If this is not done, the deaf person may suffer unnecessarily, simply because he does not understand what is expected of him.

Those who are not experienced in counseling the deaf of limited education find it very difficult to work with the verbally limited deaf person. It takes years of practice to become expert in this highly specialized field. There are three general problems:

1. It is necessary to have sufficient technical knowledge of the language of signs and the manual alphabet.
2. It is necessary to be able to explain complicated ideas in very simple language.
3. It is necessary to understand the reasoning processes and

emotional reactions of persons who have had an extremely limited education, who may not be used to dealing with abstract ideas, and who do not hear most of the environmental sounds.

It may be helpful to those entering this field to explain these problems and to give a few examples.

In regard to learning the language of signs, it may take anywhere from 6 months of intensive study to many years to acquire sufficient ability in using the language of the deaf and the manual alphabet so as to be able to communicate easily with deaf persons. Most people find it comparatively easy to make the signs, but much harder to read them. Probably the most effective way of learning the language is to associate with a group of deaf persons. Constant practice is a most important element. While the basic signs can be learned within a relatively short period, it generally requires a number of years to become aware of all of the subtle feelings and inferences that the language conveys to those who use it as their regular means of communication.

Perhaps the most important requirement of a counselor of the deaf is the ability to explain complex matters in the very simple language that the verbally limited deaf will be able to comprehend. This requires a very high measure of patience and intellectual ability.

An instructive example is that of a deaf man of very limited education who accidently cut his arm while working. He filed a claim against his employer under the Workman's Compensation Act which was in force in his state. He received about $100 for his injury. A few weeks later he saw an article in a newspaper about a girl who had cut her arm and had received $5,000 for her injury. The deaf man then wanted to know "Who has stolen the other $4,900 that I should have gotten?"

In order to explain this situation to him, it was necessary to cover the following matters:

1. That newspaper articles are written by reporters who are working very hurriedly, and such newspaper articles frequently do not state the full facts of the case. There may have been other facts not mentioned in the article which made the girl's case different from his.
2. That when such cases involving large verdicts are reported in the newspaper this does not mean that they are typical verdicts. On the contrary, the reason that they are in the newspaper is that they are highly unusual, and therefore are of special interest.
3. A girl who has a scar on her arm is entitled to more money than a man who has a similar scar because women's

dresses frequently leave the arms bare and the scar will be exposed, while a man's clothing generally covers his arm. Also, a woman's appearance is more important to her than a man's appearance is to him.

4. That the girl was suing at common law, while the deaf man was required to bring his claim under the workman's compensation laws which are entirely different.
5. That no one has stolen any money, since the $4,900 that he is concerned about never existed to begin with.

It can easily be seen that to explain matters of this kind, using only very simple language patterns, is a difficult task. Those who are expert in the use of the language of signs generally have little trouble in explaining even the most difficult and complex ideas. The ability to make things intelligible to the undereducated deaf, just as to the normally hearing of limited education, usually grows with practice. Perhaps the best way to develop this ability is by working for some time with an experienced counselor of the deaf, and observing how he handles the problems that arise.

The Undereducated, the Inexperienced

In the balance of this section the author gives, from his personal experience, examples that illustrate the complexity of adequate legal counseling for that minority of the deaf population that is seriously undereducated and inexperienced. It must be emphasized and reemphasized that the examples are not typical of our 200,000 or more deaf people. They are typical of the products of inadequate training regardless of hearing or lack of it. They highlight the need for proper interpretation not only for these educationally limited deaf people but also for that vast majority of the deaf population who are mentally, knowledgably and emotionally normal.

In addition to knowing the language of signs well enough to explain complex problems, a counselor who works with the deaf should also have sufficient experience or training in regard to the common behavior patterns of many people who have been educationally underprivileged. For example, such people may ignore the future consequences of what is done in the present. A deaf person like this who is sued in an automobile accident and is served with a summons may refuse to go to court to testify in his own defense because he would lose time from work. If he fails to appear in court, his opponent may win by default and obtain a judgment against him for many hundreds of dollars, which will lead to the later attachment or garnishment of his salary.

If these possibilities are not clearly explained to a deaf person in this category, he may not be interested in going to court. The future consequences do not impress him because they have not materialized yet. It may be hard for him to realize that it will happen at some future time. When he fails to appear and a judgment is secured against him and his wages are attached, he may return to the counselor and blame him for not doing something. The deaf person may then say that he does not remember the warnings that were given to him. These are typical practices of both hearing and deaf persons who tend to live in the immediate present, and who feel that both the future and the past are very vague. A counselor should be aware of this so that he can consider how best to handle the situation.

Some undereducated persons also have considerable difficulty with the concepts of cause and effect. If such a man has an argument with a neighbor and then next week his income tax return is audited by the Internal Revenue Service, he may be entirely convinced that the audit was caused by the neighbor. He tends to think that if one thing follows another, the first thing must have caused the second to happen. When this type of reasoning is followed far enough, absurd conclusions may be reached; it may be very difficult to explain to this person why his conclusion is not correct. The critical significance of skillful communication to deaf people who fit this pattern is obvious.

It may happen that a deaf person with a low emotional balance point will encounter something that he does not understand, something out of the ordinary, and this will alarm him and cause him to become worried and nervous for no really substantial reason. The same is true, of course, of normally hearing people with a tendency toward emotional instability. However, clarification may be much easier to achieve for the latter.

For example, a deaf woman owned her home for many years. It was numbered 719 on the street on which she lived. The street number of the house was changed by the city authorities to 717. The woman became greatly upset, believing that this must be part of a deep plot to rob her of her mail or to steal the title to her home. Such persons, whether deaf or hearing, may urgently need reassurance. In the case of the deaf, it is the job of the counselor to provide it by one means or another. A counselor who is experienced in working with the deaf will realize that such matters are not as trivial as they may appear. If they are not properly handled, they may lead to serious consequences.

People of limited education and experience may tend to accept anything that they read in a newspaper or a magazine article as being absolutely true, even though they should realize that newspaper reporters are not legal experts. They tend to accept as being true anything that is told them in a bold and positive manner. On the other hand, they tend to ignore a statement that contains qualifications, exceptions, distinctions, and uncertainties, even though the statement may come from a real expert and may be much more accurate than the broad generalizations of the nonexpert. This may be due to the fact that they are unused to dealing with complicated problems involving many conflicting factors, and feel that they must have a simple solution. This is true of undereducated deaf people, too, and must be considered by legal and/or other counsel.

The deaf, just like normal hearing people, sometimes tend to oversimplify problems. They may believe that a problem has only one cause or one solution, whereas it may actually have many causes and many solutions. Similarly, a deaf person, like his hearing brother in explaining some problem that he has, may give more importance to what is irrelevant than to the matters that are directly relevant. For example, a deaf man was asked why he did not pay back money that he had borrowed from a friend. He replied that he was not going to pay the money back because the friend was a "bad man". When he was asked why he called his friend a "bad man", he replied that his friend was "no good" because he drank too much and he had been in jail at one time. The problem here was to explain to the deaf man that this was irrelevant, and that the moral character of the friend had nothing to do with the fact that the money was due to him.

Inexperienced people may rely upon a superficial similarity that is probably immaterial. For example, when money was stolen from one deaf man, he accused the janitor in the building of taking it. When he was asked why he thought the janitor took the money he replied that many years ago a friend of his had also had some money stolen from him, and it had turned out in that case that the friend's janitor had taken it. It was explained to him that the fact that one janitor once stole money does not mean that every theft that occurs is caused by a janitor.

As another example, a deaf man said that he knew that divorce would solve all of his problems. When he was asked how he had arrived at that conclusion, he replied that divorce had turned out to be a good solution for a cousin of his. It was explained that what was good for the cousin was not necessarily good for him. In this case we find an undereducated deaf person disregarding the differences between two situations.

Some people tend to think that every problem must have definite solution. It is sometimes hard for them to realize that some problems have no answer at all, and that in other problems the answer may be relative and not absolute. For example, a deaf man wanted to know if a certain investment in stocks was safe. The counselor was able to help him understand that very few investments in stocks are completely safe; that most of them have only relative degrees of safety which must be carefully weighed and evaluated.

Deaf and hearing people in this category may, likewise, find it hard to realize that some statements are only matters of opinion, and that no definite answer is possible. A woman said that she could prove that she was a good mother by the fact that she never struck her children. It was explained to her that what constitutes a good mother is wholly a matter of opinion, that her husband was claiming that she was a bad mother on the very same ground that she never struck her children, and that as a consequence they were becoming unmanageable.

The tendency to believe that all problems have a definite and favorable answer may cause a person of limited experience to reject reasonable compromise offers that should have been accepted. This may take the form of a lack of realism. In one case, a deaf woman inherited a one sixty-fourth interest in a small farm. The other heirs offered her $500 for her interest, which she refused. She said that she knew that her inheritance must be worth thousands of dollars. Because of her refusal to accept the offer, which was actually generous, the inheritance was partitioned, and she received less than $100 for her share of the net proceeds.

In the foregoing instances and in those that follow, the transmission of the core information may be simple with the hearing person but difficult with the deaf person because communication that is effective for the deaf may not be readily available. In each case there is clear evidence of urgent need for effective counseling assistance.

Many people may have conflicting goals but may not realize that they conflict. Of interest is the case of a deaf man who wanted to collect $1,000 that someone owed him, but who also said that he did not want a lawsuit. He resisted advice that he could not get the money without the lawsuit. The result was that he did not go to law and never got the $1,000.

The following paragraphs offer examples of the reactions of poorly educated deaf people to common legal situations. It is obvious that they are also common reactions of poorly educated hearing people. Again and again the critical role of the experienced counselor of the deaf is apparent.

A deaf man seeking a divorce was asked why he had beaten his wife. He replied, "I had a right to do it because she would not cook my supper for me." It was explained to him that it was wrong for the wife to refuse to cook his supper, but that one wrong does not justify another, and that refusing to cook is not grounds for divorce, but that an assault does constitute grounds for divorce.

A deaf man wanted to file suit for divorce on the ground that his wife had committed adultery. He was asked what proof he had of this. He replied, "All the deaf people are talking about it." It was explained that this was no proof at all and no authority to rely upon. The counselor made clear that such rumors which "everybody" knows are frequently completely wrong and that they can easily be started by just one malicious person.

A deaf man was refused unemployment compensation payments for a legally valid reason. He said that he knew he was entitled to the payments, and threatened violence against the clerk who had informed him of the decision of the unemployment compensation department. He was asked what made him think he was entitled to the payments, and he replied, "They have to give it to me because I'm deaf." He finally understood that he was not entitled to special consideration because of his deafness, and that the law must be applied equally to all persons.

A deaf person let a judgment be taken against him by default. Later, he regretted that he had done this and claimed that the judgment should be reopened because he had a good reason for not appearing in court at the proper time. He was asked what this good reason was and he said, "I would not go to court because the courts are full of crooks, so why should I go there?" Advice to him was that this might be a good reason in his opinion, but it was not a good legal reason.

A deaf man bought insurance from a mutual insurance company. The application papers explained that if the company made a profit, they would pay him part of that profit. If the company lost money, then the company could ask him to make a further premium payment. Years later, he was sued for an additional assessment of $130 under the terms of the mutual policy. He refused to defend himself in the lawsuit because he claimed that he had paid for the insurance in full. He simply refused to face the fact that he had signed a special type of contract under which he might become liable for further sums of money. He continued to say, "I've already paid for that insurance. They can't make me pay more." But, of course, ignoring the facts of the case did not make the facts disappear. They could make him pay more, and they did.

Similarly, when a deaf man was arrested for homosexual offenses he was examined by prison doctors and found to be infected with a serious venereal disease. When he was released upon bail, it was explained to him that he must obtain immediate medical treatment, and that if he failed to do so and infected other persons this would create further legal difficulties for him. He replied that he knew he was not sick because he felt fine, and refused to submit to any form of medical treatment. Every effort was made to explain the situation to him, but he simply refused to accept the reality of the problem.

Some maladjusted deaf persons may have no proper outlet for their emotions. They may have a tendency to brood about some fancied insult or injury until their emotions finally result in an act of violence toward those whom they blame for their troubles. In such cases, the most important function of the counselor may be to act more as a sympathetic listener, and to aid the person in obtaining a more rational insight into the true nature of his problems.

The proper counseling of any person requires certain ability, but especially so with the deaf who use a different language, so to speak. There are very few persons available for this work at the present time. The training of additional counselors is a long and difficult task, but those who undertake this work generally get a great deal of personal and professional satisfaction out of it.

A professional counselor of the deaf does not have to possess any profound knowledge of law, but he should be familiar with the more common legal problems that arise in his field. In many cases, a few words of simple advice may be all that is necessary. Other cases may call for prompt legal attention and the professional counselor should be able to recognize such situations so that they can be referred to the proper agency, law office, or organization.

Experienced counselors of the deaf will recognize that the cases cited above are atypical, that the very large majority of deaf people are well adjusted. In court their problem may only be one of adequate communication.

SECTION 3

The Complexity of Our Legal System

Our legal system is extremely complicated. Every State in the Nation has its own legislature and its own statutes. Therefore, the laws in one State may be completely different from those of another State.

In addition, the Federal Congress passes Federal laws. There are Federal laws on some subjects, but not on others. Federal laws may apply to one kind of case but not to another kind of case, even though the two types of cases may seem very similar.

Every State has its own separate court system. In addition to all of the State court systems there is also a system of Federal courts. The relationship of one court system to another is an extremely intricate matter. Entire books have been written on that one subject.

A decision made by the judge of a trial court is not always final. In most cases the decision of a lower court can be appealed to a higher court.

The decisions of the higher courts have a very special importance. Such decisions are printed in books and are available in law libraries. In such printed decisions the higher court explains the facts of the case, the legal principles that were applied, and the final decision. Such decisions of higher courts are called precedents and they are generally considered to be binding upon the lower courts of that jurisdiction if a similar case should come up in the future.

Such precedents are very important to lawyers and judges, but in order to use them the lawyer or judge must first find out that they exist.

The cases on record involving deaf persons are buried among thousands of bound volumes of State law reports which contain a total of over 1 million reported cases. Unless these are collected in some particular book which is readily available to lawyers, it may be extremely difficult for a practicing attorney to find them. An attempt has been made in this book to collect as many of the important cases on this subject as possible and to set forth the correct legal citation of each such case, so that they can easily be found by judges and lawyers who need them.

An attempt has also been made to list and classify all of the important State statutes and the Federal acts of Congress that affect the deaf; and to set forth the correct legal citations of these laws so that they can be readily located.

Where no appellate court cases or statutory laws were found, the problems that exist have been discussed in accordance with general legal principles. For purposes of illustration, lower court cases are sometimes discussed although there may be no appellate decision on record, and therefore no citation can be given. Special emphasis has been given to the more common and practical problems that frequently arise.

In addition to the basic legal principles that are set forth by the State appellate courts, our legal system is also based upon Federal acts of Congress, State statutes, city ordinances, and the rules and regulations of a multitude of administrative agencies, school districts, county boards, township officers, etc. Our legal system is immensely complicated. Each session of a State legislature may result in the enactment of more than a thousand new laws. It is often very difficult for even an experienced attorney to find out what the law is on a particular subject.

It should be kept in mind that statutes often conflict with one another. They often contain language which is vague and ambiguous. It is not uncommon to find a city council enacting city ordinances that are beyond the legal powers of the city, or to find State statutes which are unconstitutional for one reason or another. Therefore, even where a statute is perfectly clear and it definitely applies to a certain situation, it still may not be the law because it is contrary to the provisions of the constitution.

Within a single city there may be a multitude of courts: a municipal court, a county court, a probate court, a circuit court, a district Federal court, and numerous courts of appeal. These courts may have conflicting or overlapping jurisdictions; they may issue orders that conflict with one another or that are beyond the jurisdiction of the court. The result is that an official court order which appears to be perfectly valid may actually be unenforceable for one reason or another.

The procedure that is followed in court is likewise a highly complicated subject. Sometimes the parties may be entitled to a jury. In other cases no jury may be permitted and the case is tried by a judge. In some cases the parties may be entitled to have the case heard by three judges sitting together. In still other cases the parties may not be permitted a trial in court at all, and may have to accept some kind of a hearing before an administrative agency. The rules and procedures that are followed in one court may be entirely different from those followed in another court, and the procedure in one type of case may be different from that used in another type.

It is quite common to find the most eminent attorneys and judges differing among themselves as to what the law is on a particular subject, and how it should be applied. Yet, we find uneducated persons who have no legal knowledge or experience whatever saying that they positively know what the law is on a particular question because "I have a friend who is a bartender and he knows all about it."

Therefore, where important legal matters are involved, the persons concerned should always secure proper legal advice. Law is not a field where one should attempt to "do it yourself". But a basic knowledge of fundamental legal principles is something that should be a part of the education of every citizen. While a limited knowledge of law will not enable a person to act as his own lawyer, it will certainly help him to avoid unnecessary legal troubles, and it will help him to understand when a problem exists so that he can secure proper assistance.

SECTION 4

Working With Attorneys

A person of limited education may not understand the function of an attorney and may not have the slightest idea of how a lawyer works, or how to cooperate with him. When such a person is deaf early clarification is vital. The following matters should be explained to the deaf person before his first meeting with his attorney in order to facilitate the handling of the case. Such instructions will save a great deal of time for everyone concerned, and will help to eliminate misunderstandings.

Before a deaf person consults an attorney, he should first write out a complete statement of the facts of the case, explaining exactly what happened. He should put down the dates of each event; the names, addresses, and telephone numbers of the different persons involved in the matter; the names and addresses of any witnesses; descriptions of important objects; the locations where the different events took place; and all of the other material facts of the case. He should also write down exactly what he believes his problem to be, what he desires the lawyer to do, and any questions that the deaf person wishes the lawyer to answer.

The written statement probably will not be entirely adequate and the attorney will probably have many other questions to ask. Likewise, the deaf person's statement of what he believes his problem to be may also be entirely incorrect, and his problem may be quite different from what he believes it to be. Similarly, what the deaf person desires the lawyer to do may not actually be the correct solution to his problem. But, although such a preliminary written statement by the deaf person may be incorrect and inadequate, it will always be very helpful to the attorney in explaining to him the general nature of the problem.

A deaf person should always be advised to take with him to the lawyer's office all of the papers in his possession dealing with the matter under consideration. It is a waste of time to tell a lawyer that the deaf man signed a contract, a deed, a will, or a promissory note, etc., but that he left the document at home. A lawyer generally cannot give accurate advice on a problem until he has seen the papers involved, so they should always be taken along when one goes to consult an attorney.

The deaf person should always be advised to give the attorney all of the facts that may affect the case and in no way mislead the lawyer. Nothing should ever be held back due to embarrassment or fear. The lawyer must have full knowledge of all the facts to advise the client properly.

Whatever is told to an attorney by his client is considered to be a confidential communication, and the client need not worry that it will be revealed. The protection of the attorney-client privilege as to confidential communications covers the interpreter as well, since he is considered to be a necessary agent of the attorney. An interpreter should at all times refuse to disclose anything that was mentioned in a conference between an attorney and his client. This is particularly true where the client admits the commission of a crime, or some other serious matter is involved. It is a fundamental principle of the law that persons must be free to communicate with their attorneys in absolute confidence, and the exercise of this privilege includes the necessary interpreters.

The proper method of selecting an attorney is for the person to inquire among his friends and relatives for the name of some attorney in his city who has handled similar cases in the past in a creditable manner. A deaf person should not try to pick his lawyer from out of the pages of a newspaper. He should rely upon the recommendations of persons he knows, in whom he has confidence, or contact the local bar association for the names of several attorneys for this purpose.

Many legal matters involve more than one State. For example, a deaf person driving from California to New York may have an automobile accident in Chicago. Upon arriving in New York, where he plans to stay, the deaf person may not understand how he can retain a lawyer in Chicago at a time when he is living in New York. The answer is that he should retain a lawyer in New York if he lives there. The New York lawyer will then select a Chicago lawyer who will handle any necessary matters in Chicago. There are a great many law lists and legal organizations throughout the Nation by means of which one attorney can hire local lawyers in any other place. The deaf person has only to engage an attorney at the place where he lives, and that attorney can make all of the other necessary arrangements.

A deaf person should always make a definite agreement with his attorney in regard to what the attorney's fee will be, and an effort should be made to make sure that the deaf person fully understands the fee agreement. Deaf persons sometimes tend to think that attorneys are paid by the court and that their services are free. Some cities do have a legal aid service that provides free legal assistance for destitute persons, but the services of a personal attorney are generally not free and must be paid for by the person who consults that attorney.

Once the deaf person has engaged an attorney he should be instructed to let the attorney handle everything that comes up in the future concerning that case. The client should be instructed not to sign papers, make statements, or do anything that would conflict with the attorney's management of the case. It sometimes happens that the persons on the other side of the case will attempt to take advantage of the fact that the deaf person cannot use the telephone by pretending that they are acting under the authority of the deaf person's lawyer. For example, when a deaf person is suing an insurance company, an insurance agent may come to his home and say, "Your lawyer sent me here to get this statement from you." Since the deaf person is unable to call his attorney on the telephone to verify this, he may be inclined to believe this and sign a statement that is entirely against his best interests. The deaf should be cautioned against this. They should take no action in a case unless they have been so instructed by their own lawyer in writing.

It should be explained to the deaf person that the attorney will do his best to present the case properly to the court and to the jury, but that the lawyer cannot guarantee that he will win his case. It should be explained that the fact that the deaf person is right and that the opponent is wrong does not necessarily mean that he will win his case. The judicial process is far from being certain, and in fact there is often a great deal of unpredictability about even simple cases. It is often said that in order to win a case in court the client not only needs a good case; he also needs "a good judge, a good jury, good witnesses, a good lawyer, and good luck."

SECTION 5

Deaf Persons as Witnesses

Deaf persons were formerly considered to be of limited intelligence and therefore were not permitted to testify as witnesses. (Wharton's Criminal Evidence, 10th ed. vol. 1, sec. 375.) However, this is no longer the case. The situation has been described by the Supreme Court of the State of Mississippi as follows:

> Mr. Blackstone stated, in substance, that one who was born deaf and dumb was presumed to be incapable of understanding and was considered in law an idiot. But such a doctrine was announced at a time when eleemosynary institutions were few and when there was no adequate system of education for deaf-mutes. The doctrine announced in Blackstone's day has been largely relaxed, if not altogether abolished, and deaf and dumb persons are now generally accepted as competent witnesses. Of course, the showing must be made in any given case that the witness has a system of communication * * *
> (*Bugg* v. *Houlka*, 122 Miss. 400, 84 So. 387.)

In order for a deaf person to be a competent witness, there are two fundamental requirements:

1. The witness must be able to understand the questions that are put to him; and he must be able to answer them in some effective manner. That is, he must have some practical system of communication.
2. The witness must understand the obligation of his oath to tell only the truth.

There are two ways of proving that the witness has some practical method of communication. First, by the testimony of some expert in this field of communication with the deaf who examines the witness outside of the courtroom; and then the expert testifies as to whether or not the witness does possess some adequate method of communicating. Second, by actually proceeding with the questioning of the witness in court, and letting the judge and jury see for themselves whether or not the witness is able to testify through the aid of an interpreter or in some other manner.

The requirement that the witness must have some effective method of communication before he will be permitted to testify is not based merely on practicalities. It is also based on the fundamental legal principle that a party has the right to cross-examine witnesses who appear against him. If the deaf witness cannot be effectively communicated with, then there is no way to cross-examine him as to the details and consistency of his testimony.

The right of cross-examination is a very basic right and a most important one. Often there is no other way to expose perjury or honest errors on the part of the witness except by a deep and searching cross-examination, which may expose ambiguities, lack of knowledge, inconsistencies, bias, or self-interest on the part of the witness.

However, this does not mean that a deaf witness will be excluded merely because his cross-examination will be difficult. This is illustrated by the case of *Burgess* v. *State*, 1951, 256 Ala. 5, 53 So. 2d 568. In this case, John Burgess had been going with a deaf girl named Grayce Payne. The girl's father objected, and Burgess then murdered the father in the presence of the girl. The girl testified at the trial as an eyewitness against Burgess, using a system of natural signs that were only understood by her brother. The defendant objected that he would be unable to cross-examine the witness properly under these circumstances, but the Alabama Supreme Court held against him and said:

> It is well settled by modern authority that it is permissible for such witness to testify as against the objections that the party against whom such testimony is given will be put to great disadvantage in cross-examination to test the witness's credibility. 5 Chamberlayne, The Modern Law of Evidence, sec. 3635, 3636; *Pruitt* v. *State*, 232 Ala. 421, 168 So. 149. And it is observed by Professor Chamberlayne in the last paragraph of said section 3636, pp. 5171–72, that: "And though a dumb person may not be educated in the use of signs and can only express assent or dissent by a nod or shake of the head, thus rendering cross-examination difficult, he may nevertheless by permitted to testify; but it is said that his disability may be considered by the jury, as bearing upon the weight of his testimony. That difficulty attends the examination of a deaf-mute is no reason why his testimony should be excluded," citing *Quinn* v. *Halbert*, 1882, 55 Vt. 224; *Ritchey* v. *People*, 1896, 23 Colo. 314, 47 P. 272, 384; *Rushton's Case*, 1 Lea. C.C. 455 (1786); *State* v. *DeWolf*, 1830, 8 Conn. 93, 99; *Snyder* v. *Nations*, 1840, 5 Bladkf., Ind., 295.

The second requirement, that the witness must be able to understand the obligation of an oath, may be difficult to establish in some cases. The concept of an oath involves a number of abstract and highly complex ideas. In order to take an oath a person must first understand the nature of truth and untruth and the further concept of God or of some supreme being who will punish those who lie. Even the concept of punishment is a highly abstract idea and one that is difficult to communicate to a person who lacks fundamental language.

The difficulty of the problem is illustrated by the case of *Territory* v. *Duran*, 3 N.M. 189, 3 Pac. 53. In this case a deaf child, 9 years of age, was the only eyewitness to a murder. In clear and unmistakable signs and pictures he identified the murderers and showed how they had committed the murder. The situation was described in the court's opinion as follows:

> * * * with a paper and pencil he very readily drew a rude plat of the house and grounds and objects in the immediate vicinity, the roads to and from the place, and its location with reference to Fort Bayard, that was clear and intelligible. On this plat he marked out the position of each of the defendants while in the act of killing the Chinamen, as also his own position holding the horses. He also designated on the plat the three Chinamen where they fell. With the aid of his plat he was able by signs and gestures to express very intelligently the manner in which the Chinamen were killed, and the part each defendant took in perpetrating the deed; each of the three defendants was so perfectly marked that he could easily identify them by signs. One was distinctly pock-marked, another had a very peculiar broken-down nose, and the other had a plain mark or line around his neck. The boy designated and identified him by making a circling motion around his own neck with his hand.
>
> (3 Pac. 60, dissenting opinion.)

At the trial of this case, the trial judge attempted to find out if the child understood the nature of an oath. The record of the trial reads as follows:

> From the record it appears that the mother of the deaf-and-dumb boy, Luther Carey, was called, and sworn to act as an interpreter for the child. She testified in substance that he never had been educated in the deaf-and-dumb language, but that she could make herself understood to him by signs, and that generally she could understand him. The court asked her this question. Question: "Ask him (the deaf-and-dumb boy) what will be done to him if he should tell an untruth as a witness here—if he should tell a lie while he is giving his testimony, what would be done to him?" Here, the record shows, Mrs. Carey made several signs and gestures to the deaf-mute with her hands. Answer: "I can't make him understand." Q. "You say you cannot make him understand?" A. "No sir; I cannot. He has the idea of the murder fixed in his mind, and he wants to tell that." Q. "Can you convey to him an idea that he will be punished if he does not testify truthfully?" Here the witness again repeats the signs and gestures to the mute. A. "I cannot make him understand me; he is telling how the murder was committed, and what he saw!"

In spite of the fact that the child could not be made to understand the legal nature of an oath, his testimony and evidence were received by the trial court. Upon appeal to the appellate court, this was held to be an error. The appellate court said:

> * * * it was not shown that the child had any intelligent idea whatever of the nature or sanctity of an oath; on the contrary, it was shown by the testimony of his mother that she could not explain to him its nature, or the consequence of telling a falsehood while testifying as a witness. There is no case which we can find in the books in which a person was permitted to testify under such circumstances.

Due to this error, the verdict of guilty was reversed and the case was sent back to the trial court for a new trial. At the new trial the child was not permitted to testify, which undoubtedly led to the release of the defendants. The result is that men who were almost certainly guilty of a brutal murder were set free, simply because the deaf boy could not understand the nature of an oath. This case has been described as: "one of the most remarkable cases in the history of legal proceedings" (55 Vt. 229, reprint vol. 16, p. 74).

In regard to this situation, the dissenting opinion states:

> The books nowhere furnish a precedent like this. If the law of evidence in no way opens the door for testimony of this kind, then all I have to say is that the law in this respect is certainly at fault, and the sooner it is changed, either by judicial precedent or by legislation, the better.

Another example of this situation is the case of *Pruitt* v. *State*, 232 Ala. 421, 168 So. 149, in which Tula Pruitt, a 14-year-old deaf girl, was an eyewitness to a murder committed by her father. Upon examination through an interpreter it was found that she knew who God was, she knew what it was to pray, she knew what it was to tell the truth. She did not know what sin is, did not know where Hell is, did not know what becomes of bad little girls. The defendant objected that under these circumstances she did not know the meaning and obligation of an oath and therefore should not be permitted to testify.

The Alabama Supreme Court held that there was no error in permitting her to testify and she was held to be a competent witness. Her evidence was received; her father's conviction for murder therefore was upheld and he was executed.

When a deaf witness has an adequate method of communication and understands the obligation of an oath, it is now firmly established that the witness is competent to testify.

The Supreme Court of Iowa said in the case of *State* v. *Butler*, 157 Iowa 163, 138 N.W. 283:

> The suggestion that the deafness of Mrs. Atherton rendered her incompetent to testify is without merit. Even a deaf-mute, if of sufficient mental capacity and able to communicate his ideas by signs or in writing, is a competent witness. (Cases cited.)

There are a great many cases on record establishing this principle. See the following:

Alabama:

- *Burgess* v. *State*, 256 Ala. 5, 53 So. 2d 568 (murder case; brother acted as interpreter for deaf witness).
- *Pruitt* v. *State*, 168 So. 149 (murder case; 13-year-old deaf girl was competent witness).

Arkansas:

Dobbins v. *Little Rock R. & Electric Co.*, 79 Ark. 85, 95 S.W. 794 (assault case; deaf witnesses could testify).

Hughes v. *Tapley*, 206 Ark. 739, 177 S.W. 2d 429 (workman's compensation case; employee injured while teasing a deaf co-employee).

Colorado:

Ritchey v. *People*, 23 Colo. 314. 47 Pac. 272, 384 (murder case; testimony of deaf witness as to written threats of the murderer taken in writing).

Connecticut:

State v. *DeWolf*, 8 Conn. 93 (rape of a deaf woman; testimony in language of signs).

Indiana:

Snyder v. *Nations*, 5 Blackf. 295 (assault and battery case; testimony in language of signs).

Indiana:

Skaggs v. *State*, 108 Ind. 53, 8 N.E. 695 (attempted rape of deaf woman; use of two interpreters was proper).

Iowa:

State v. *Butler*, 157 Iowa 163, 138 N.W. 383 (rape case; deaf witness could testify).

State v. *Burns*, 78 N.W. 681 (seduction of a deaf woman; friend could act as interpreter. Use of leading questions was in discretion of the court).

State v. *Rohn*, 140 Iowa 640, 119 N.W. 88 (repeated rape of a deaf-woman; her testimony was admissable).

Mississippi:

Bugg v. *Houlka*, 122 Miss 400, 84 So. 387 (property stolen from deaf man; he could testify through an interpreter of reasonable ability).

Missouri:

State v. *Howard*, 118 Mo. 127, 24 S.W. 41 (murder of a deaf man; deaf witnesses could testify).

State v. *Smith*, 203 Mo. 695, 102 S.W. 526 (rape of a deaf girl 17 years of age with mental development of 11 years; she could testify through her teacher at school for the deaf).

New York:

Cowley v. *People*, 83 N.Y. 464, 478 (comparison of the use of language of signs with the use of photographs).

Pennsylvania:

Commonwealth v. *Clark*, 52 Pa. Dist. & Co. 189 (rape of a deaf woman; she could testify although she did not know the standard language of signs).

South Carolina:

State v. *Weldon*, 39 S.C. 318, 17 S.E. 688 (robbery case; deaf person could testify).

Texas:

Kirk v. *State*, 37 S.W. 440, 35 Tes. Cr. 224 (robbery case; deaf witness could read the oath).

Vermont:

Quinn v. *Halbert*, 55 Vt. 224 (a man who was mute but not deaf, did not know the language of signs and could communicate only by signals, was a competent witness in a civil case).

England:

John Ruston's Case, 1786, 1 Leach Cr. Cas. 408, 168 Eng. Rep. 306 (a deaf man could testify through his sister as interpreter, using arbitrary signs).

Since a deaf person is a competent witness, a deaf person who is a plaintiff in a lawsuit can be required to testify at a pretrial deposition proceeding, and if he fails to do so his case can be dismissed for failure to comply with the court's order. His deafness will not excuse his failure to testify. See *Smith* v. *First National Bank of Barbourville,* 247 Ky. 171, 56 S.W. 2d 953.

Where a deaf person does not hear the oath that is given to him as a witness, but knew that he was being sworn to tell the truth, the fact that he did not hear the actual phraseology of the oath is immaterial. The opposite party knew that the witness was deaf and made no objection at the time that the oath was given (*Texas & P. Ry. Co.* v. *Reid,* (Tex. CCA) 74 S.W. 99).

SECTION 6

Methods of Testifying by the Deaf

There are generally two methods that can be used to take the testimony of a deaf person in court. First, by submitting the questions to the witness in writing and having the witness answer them in writing. Second, by using the sign language of the deaf and having an interpreter to translate the signs. (Language of signs in this book means natural and arbitrary gestures plus the manual alphabet or fingerspelling.)

If no interpreter is available, it may be necessary to have the questions and answers put in writing. However, this is a very time-consuming process and the courts are usually reluctant to spend many hours or even days in attempting to conduct an examination in writing. This method of examination also gives the witness an unusually large amount of time to consider his answers to the questions. For this reason, it is particularly unsuitable for cross-examination. Moreover, the witness' ability to express himself in writing may be very limited.

For all of these reasons, it is generally considered preferable to conduct the examination in the language of signs through the use of an interpreter. This method of examination is much faster and, if a properly qualified interpreter is used, it almost always produces better results.

It was held by the Arkansas Supreme Court in the case of *Dobbins* v. *Little Rock R. & Electric Co.*, 79 Ark. 85, 95 S.W. 794, that the court should use whichever of these two methods is the better in view of the particular circumstances of the case. For example, in the case of *State* v. *DeWolf*, 8 Conn. 93, it was shown that the witness was able to express himself well in signs, but very imperfectly in writing. It was therefore held that it was correct and proper to take his testimony in the language of signs. Of course the court should not appoint an interpreter until it has first been determined that one is needed (*Russell* v. *Rutledge*, 158 Ill. App. 259).

It has been held in certain cases that it is likewise perfectly proper to take the testimony of a deaf person in writing. See *Ritchey* v. *People*, 23 Colo. 314, 47 Pac. 272; *State* v. *Howard*, 118 Mo. 127, 24 S.W. 41; *Harrison* v. *Thackaberry*, 248 Ill. 512, 94 N.E. 172.

The legal principle that is most commonly followed in regard to this problem is that the method to be used should be selected by the trial judge, and the appellate court will not interfere with this selection unless it is shown that a definite injustice has resulted from the use of that method. See *Skaggs* v. *State*, 108 Ind. 53, 8 N.E. 695; *Dobbins* v. *Little Rock R. & Electric Co.*, 79 Ark. 85, 95 S.W. 794.

Preliminary Ruling as to Best Method

In line with these principles, when an attorney takes the testimony of a deaf person in the language of signs, he should secure a preliminary ruling from the court in the following manner:

> Attorney to the court—"Your Honor, the witness and the interpreter have been sworn, and the interpreter has qualified for his office. I would now like to conduct a preliminary examination of this witness to find the best method of communicating with him and securing his testimony."
> The Court—"All right. Proceed."
> Attorney (to the witness)—"What is your name?"
> The Witness—"John Smith."
> The Attorney—"Are you deaf?"
> The Witness—"Yes, I am."
> The Attorney—"Can you speak?"
> The Witness—"No, I cannot."
> The Attorney—"Can you read and write?"
> The Witness—"Yes, I can."
> The Attorney—"Do you know the language of signs?"
> The Witness—"Yes, I know it."
> The Attorney—"Which of these methods of communication would be best for obtaining your testimony in this proceeding?"
> The Witness—"It would be better to use signs."
> The Attorney (to the court)—"Your Honor, I move for a ruling that the testimony of this witness should now be taken in the language of signs rather than by writing."
> The Court (to opposing counsel)—"Do you have any objection?"
> Opposing Counsel—"No objection, your Honor."
> The Court—"It is so ordered. Proceed with the examination of the witness."

By making this preliminary examination and obtaining a ruling from the court in this manner, the opponent will not be able to claim successfully at some later time that the wrong method of communication was used.

Preparing Deaf Witness To Testify

It is customary for lawyers to prepare witnesses to testify before they are actually called upon to take the witness stand. It is always considered advisable to do this when the witness has never testified before, and does not understand court procedure and the rules of evidence. It is, of course, particularly important to do this carefully when the witness is deaf, does not have the usual language abilities, and lacks experience in dealing with a complicated question or abstract ideas.

It is important for the attorney to keep in mind when questioning a deaf witness by means of an interpreter that he is not merely questioning someone who uses a different language. He is questioning someone who may have a totally different and unusual way of thinking and remembering. The born, or early-onset, deaf person may not think in terms of the usual language symbols. He may think and remember in terms of visual pictures. His thoughts and memories may not crystallize into word symbols. He may think more frequently in terms of the original sensory impression.

For this reason a deaf witness may prove to be a very valuable witness. He is likely to remember details that no one else noticed at all or bothered to remember. A deaf witness can frequently reenact the entire incident in question with a high degree of accuracy. He is much more likely to remember what people were wearing, who the bystanders were, what the weather was, and other such facts.

This visual mentality is carried over into the language of signs itself. This language of the deaf is basically an abbreviated pantomime. It is a reenactment, according to certain commonly accepted methods, of the actual event that is being discussed. For example, if a deaf man who has suffered from a broken leg is asked, "Where were you hurt?", he will answer by pointing to the spot on his leg where the bone broke and making certain motions with his hands that indicate exactly how the leg was broken. If he is asked, "Where were you standing at the time of the accident?", he will draw in signs a picture in the air of the city street where he was standing, and indicate exactly where he was standing with relation to the principal landmarks. A deaf man's answer to a question is frequently a drawing in the air which illustrates the entire topic that is brought up by the question. His answer may give much more information than the question requested, or it may be unresponsive to the question. In the latter event, with the judge's permission, the question should be restated.

Therefore, it is helpful to explain to the deaf person before he testifies that he should try to express himself as definitely and concisely as possible. He should be instructed not to discuss immaterial matters, but should confine himself to the exact question that is being asked.

It should be explained to him that he should not merely repeat what other persons have told him (hearsay) and that he must testify only to those things that he has seen himself.

Preliminary preparation of a witness should make clear to him that all parts of his testimony must agree and be consistent with one another. For example, an inexperienced, unprepared deaf man may testify that he was driving 20 miles an hour from his home to the scene of the automobile accident. He may then testify that the distance from his home to the scene of his accident is 10 miles, and that it took him 10 minutes to reach the place. He may not realize that these statements do not agree with one another. The figures are internally inconsistent.

Some deaf persons, just like others, have considerable trouble with problems involving relative positions. For example, some have difficulty remembering that if two persons are facing each other, what is on the left side of one person is naturally on the right side of the other. Moreover, the undereducated deaf person may have considerable trouble understanding such standard questions as, "Where were you standing in reference to the accident?". Likewise, some deaf people may be unused to dealing with symbols of weight and measurement. For example, a deaf man may say that a certain distance was definitely more than 10 yards, and later say that it was definitely less than 30 feet. In order to avoid such complications, the testimony should be reviewed before appearing in court so that any such difficulties can be explained to the deaf person and he can be made to understand them.

Use of Leading Questions

It should be explained to the deaf witness that if he does not fully understand a question, he should not attempt to answer it. He should not be afraid to ask to have the question reworded until he does understand it. He should be particularly warned against merely answering yes or no to leading questions. Such questions may contain a statement of which he is not fully aware.

For example, a deaf woman tripped on a broken sidewalk and sued the city for her injuries. The city contended that the woman had slipped on the ice (for which the city was not liable), and had not tripped at all. The attorney for the city asked the deaf woman a great many questions about how she had slipped, hoping to get her to agree inadvertently that she had slipped, not tripped. The witness should be warned against this type of questioning, since the deaf often have a habit of saying yes to questions that they do not fully understand.

It has been held by the Iowa Supreme Court that the trial court has discretion in permitting leading questions to be asked of a deaf witness. The case of *State* v. *Burns*, 78 N.W. 681, involved a deaf woman who brought suit against a man who had seduced her. The Iowa Supreme Court said:

> The prosecutrix was asked if, because of his promise to marry her, she consented to have sexual intercourse with him. There is a complaint of the question being leading. The question might have been put in a less objectionable form, by letting her state in her own language the reason why she permitted the intercourse. But, as we have said, she is a deaf-mute; and in such cases there is always more or less difficulty in eliciting testimony, and hence there is vested in the trial court a discretion in such cases.

In the case of *Alabama & V. Ry. Co.* v. *Kelly*, 126 Miss. 276, 88 So. 707, the court said:

> It is also earnestly insisted that the court should not have permitted leading questions to be asked the deaf-and-dumb witnesses, but we think the record shows that this was necessary in order that their minds might be directed to the question.
> (At page 709.)

Another case permitting the use of leading questions where the witness is deaf is *Selenak* v. *Selenak*, 150 Ill. App. 399.

However, it is very questionable that leading questions should be permitted in taking the testimony of the deaf, unless there is a real necessity for doing so. A deaf person, due to his limited language abilities, may be totally unable to determine whether the language used in the question accurately describes the facts of the situation. Therefore, the use of leading questions may result in serious errors.

The deaf witness should always testify in his own words, not merely say yes or no to leading questions put to him by the lawyers. The following example will illustrate the difference between leading questions and proper questions:

Leading Questions

Your name is John Smith?
You live in Chicago?
You saw the fight on Saturday at the tavern?
The man hit the woman in the face?
The woman did nothing to provoke the fight?

Proper Questions

What is your name?
Where do you live?
What happened on Saturday at the tavern?
What did the man do?
What did the woman do?

If a deaf witness is asked leading questions, and he merely answers them yes or no, and it is suspected that the witness actually does not understand the questions, an objection should immediately be made against this practice. A motion should then be made to the court to have the entire examination repeated, without the use of leading questions, to see if the witness actually understands the matters under consideration.

Deaf Person Alone in Court

It frequently happens that a deaf person must appear alone in court without an interpreter or help of any kind. Of course, this situation should be avoided if at all possible, but if the case is small and not too important and the court is located far away, it may be impossible for the social worker or other professional helper to accompany the deaf person to court. In such cases, the deaf person should be instructed to use the following procedure:

It should be explained to him that he should get to the courtroom early, before the time set for his case. He should go up to the clerk in the courtroom, who is usually seated at a desk at one side of the room, inside the bar. He should give a written note to the clerk reading approximately as follows:

> My name is John Smith.
>
> I am deaf and I cannot speak.
>
> I have been subpoenaed in the case of *Smith* v. *Jones*, No. 1234, which is set for 9 o'clock this morning.
>
> I will not be able to hear when this case is called. When the case is called, please come over and tap me on the shoulder to let me know.
>
> Thank you.

The clerk will then inform the deaf person when his case is being called. The deaf person should then step up to the bar, in front of the judge, and immediately give the judge a brief note or letter explaining the situation. A proper form of such a note would be as follows:

> If the court please
>
> My name is John Smith.
>
> I am deaf and I cannot speak.
>
> I have been subpoenaed as a witness in this case, of *Smith* v. *Jones*, No. 1234.
>
> I was standing on the sidewalk and I saw the accident happen.
>
> If I am sworn as a witness, I will testify as follows: (explain what happened).
>
> I can take the oath and testify in writing if it is necessary.
>
> If an interpreter is needed, you could get Mr. Jones for this. His telephone number is ————.
>
> Thank you.
>
> Signed (John Smith),
> Witness in Case No. 1234.

By making up these notes ahead of time and using them, a deaf person will be able to let the judge know what the situation is, and the judge will generally find some way to handle the matter. The deaf person should be told never to go to court and just sit there without letting the clerk and the judge know that he is there. If he merely sits there and misses the calling of his case, he will generally be marked as failing to appear and a warrant may be issued for his arrest, or other legal action may be taken against him, depending on the nature of the case.

SECTION 7

Proof of Ability Needed by the Interpreter

The first requirement of an interpreter is, of course, that he must have the necessary ability to use the language of signs. It is best to obtain the services of a person who can qualify as an expert in the use of this language, but this is not absolutely necessary. It is sufficient if the interpreter is able to communicate with the particular deaf person who is being questioned as a witness.

For example, in the case of *Skaggs* v. *State,* 108 Ind. 53, 8 N.E. 695, involving the rape of a deaf woman, the interpreter was not an expert in the language of signs but he was able to communicate with the witness. The Indiana Supreme Court held that there was no error in permitting him to act. The Court said:

> Wright (the interpreter) did not claim to be an adept in the deaf-and-dumb, or sign language, but he claimed that he so far understood the language that he could well and truly interpret, as well as the questions that might be propounded to the deaf and dumb witness as her answers thereunto. There is nothing in the record to show that Wright could not do all that he claimed he could do, and, certainly, nothing to show that appellant was in anywise injured by the action of the court in permitting Wright to act as an interpreter in the examination of the prosecutng witness (8 N.E. 697).

It was further held in this case that it was proper for the court to permit another deaf person to act as a second interpreter to aid the first interpreter. The court said:

> Another alleged error of law occurring at the trial, and assigned as cause for a new trial in appellant's motion therefor, was the action of the court in appointing a Miss Coons, a deaf-and-dumb person, as an additional interpreter, to assist Wright in the interpretation of the examination of the prosecuting witness; and in permitting the questions propounded by counsel to the prosecuting witness to be interpreted by Wright to Miss Coons, and by her to the witness; and in permitting her answers to be interpreted by Miss Coons to Wright, and by him to be given orally to the court and jury. There certainly was no error in the appointment of Miss Coons as an additional interpreter. The object of the examination of the prosecuting witness was to get the facts of this case, within her personal knowledge, before the court and jury; and the court had power, undoubtedly, to appoint as many interpreters as to it seemed necessary to the accomplishment of that object. The man-

> ner in which such examination should be conducted was a matter to be regulated and controlled by the trial court, in its discretion, and will not be reviewed by this court, in the absence of a showing that appellant was in some way injured thereby.

There are two conflicting legal theories as to who should properly determine whether the interpreter is competent. The first viewpoint is that this question should be determined by the jury as a part of its general factfinding function. As the court said in the above case:

> It may be added that the accuracy of the interpretation of the sworn interpreter may be impeached, and is ultimately to be determined by the jury (cases cited).

The other viewpoint is that the competency of the interpreter is a preliminary question of fact to be determined by the trial judge before the interpreter is allowed to act. This is the viewpoint that was followed in the case of *People* v. *Weston,* 236 Ill. 104, 86 N.E. 188. In this case the defendants were accused of the rape of a deaf woman. The woman's testimony was taken as follows:

> At the trial W. H. Williams, a lawyer, who understood the deaf-mute sign language fairly well, was sworn to act as interpreter. There was present also at the trial a man named Nove Morgan, who was a partially educated deaf-mute, and, as Mrs. Eason could not make herself understood to Williams, Morgan was requested to ask Mrs. Eason questions and to interpret her answers to Williams, who then interpreted them to the court. Neither Morgan nor Mrs. Eason was sworn. A number of questions asked by counsel for the prosecution were interpreted by Williams to Morgan and by Morgan to Mrs. Eason. Her answers, so far as Morgan could understand her, would then be interpreted to Williams and by Williams to the court. The first of several questions were for the purpose of ascertaining to what extent Mrs. Eason could understand questions asked her by Morgan, and to what extent she could communicate to him her answers to questions she understood in such manner as that he could understand her. This examination showed that Morgan and the witness could communicate with each other so as to be understood to some extent, but not fully, so that Morgan could communicate answers to all questions intelligently to Williams. This examination was conducted in the presence of the jury * * *
>
> But the examination should not have been conducted in the presence of the jury. It was intended for the court and the jury should have been removed.

In the above case, the witness was asked a number of preliminary questions in order to see if the interpreters could obtain the desired information. Since this was merely a preliminary examination for this specific purpose, the interpreters were not sworn. The Illinois Supreme Court held that this preliminary examination was intended only for the court, and that the jury should have been removed from the courtroom while this was being done.

This is exactly the opposite of the position taken by the Indiana Supreme Court, which held that it is the jury itself that should determine whether the interpreter is competent.

In view of the fact that there are conflicting legal viewpoints on this matter, and since most State supreme courts have never considered the question and their ultimate decisions cannot be predicted, the safest procedure in establishing the qualifications of the interpreter would be as follows:

> Counsel—"Your Honor, I wish to use Mr. John Smith as interpreter for this deaf witness; and I wish to establish his qualifications in the presence of the jury."
>
> The Court—"Proceed."
>
> Counsel—"I wish to have the witness sworn."
>
> The Court—"Let the witness be sworn."
>
> (The witness is duly sworn by the clerk.)
>
> Counsel—"What is your name?"
>
> Interpreter—"John Smith."
>
> Counsel—"What experience have you had with the language of signs?"
>
> Interpreter—"I have been a teacher in a school for the deaf for 15 years."
>
> Counsel—"Are you thoroughly familiar with the language of signs?"
>
> Interpreter—"Yes, I am."
>
> Counsel—"Have you spoken with this witness previously?"
>
> Interpreter—"Yes, I have."
>
> Counsel—"Are you able to understand her and to make yourself understood by her?"
>
> Interpreter—"Yes, I can."
>
> Counsel—"Your Honor, I ask for a ruling from the court that Mr. Smith is qualified to act as interpreter in this case."
>
> The Court (to opposing counsel)—"Have you any objection?"
>
> Opposing Counsel—"No objection."
>
> The Court—"I rule that he may act as interpreter."
>
> Counsel—"I also offer to make a demonstration out of the presence of the jury, to prove that the interpreter is able to communicate with this witness."
>
> The Court—"It will not be necessary. I have already ruled that he may act as interpreter."

By following this procedure, the testimony obtained by the interpreter will be protected regardless of which legal theory the State supreme court may ultimately follow as to the correct method of establishing the competency of the interpreter. By making the preliminary examination of the interpreter under oath in the presence of the jury, the rule that the jury is supposed to determine the qualifications of the interpreter is fully satisfied. By making an offer to prove that the interpreter can communicate with the witness outside of the presence of the jury, the other rule, that the court should be the one to make this decision, is also fully

satisfied. In this manner, both legal theories are fully complied with, and there is very little danger that the decision in the case may later be overruled because the competency of the interpreter was not properly established.

SECTION 8

Who Can Act as an Interpreter—Interested Persons

Particularly in smaller cities, it may be difficult for an attorney to find someone who can interpret the language of signs. In attempting to locate an interpreter, the first person to ask is the deaf person himself, who will frequently be able to suggest some friend or relative. If the deaf person does not know of any suitable interpreter, an inquiry should be made of the State or city schools for the deaf, who may be able to supply some member of the faculty. If this does not succeed, then inquiry should be made among the churches in the city to find out if there is some priest or minister who works with the deaf and is able to communicate with them.

Inquiries can be made to the State department of vocational rehabilitation, to social welfare agencies, to the local police department, local hospitals, the Traveler's Aid Society, and to any local clubs or organizations of the deaf. Inquiry can also be made of physicians who specialize in treating deafness, of the local medical society, and of local translation bureaus or schools of languages. Even if these organizations cannot furnish an interpreter themselves, they may be able to recommend someone.

It frequently happens that a deaf person involved in litigation will want to have a friend or relative act as his interpreter. Sometimes the deaf person will know all of the interpreters in the area quite well and will be more or less friendly with all of them. When such a person is about to act as interpreter in the case, the opposing party will usually object that the person is not a proper individual to act as interpreter because he is a friend of the deaf witness and, therefore, may not be impartial.

The case of *State* v. *Burns*, 78 N.W. 681 was brought on the indictment of a man on a charge of seduction of a deaf woman, and this situation was involved. The Iowa Supreme Court said:

> The prosecuting witness is a deaf-mute—Maggie Moriarty—and, when on the stand as a witness, one Miss Williams, who was a friend of hers, was interpreter; and it is insisted that it was error to permit a friend of the witness to be the interpreter. There is not a thing to show unfairness or prejudice from the use of the interpreter. Mere friendship will not raise a presumption of prejudice. In such matters the trial court

> has a discretion that is not to be interfered with, unless there is an abuse of it (cases cited).

Likewise, in the case of *Morse* v. *Phillips,* 128 So. 336, which involved a deaf man who had been shot by a constable without any reason whatever, the deaf man had his daughter act as his interpreter. It was objected by the other party that it was improper for a daughter to act as interpreter for her father, particularly in view of the fact that the daughter herself was also a witness in the case. The Mississippi Supreme Court discussed the question in great detail, and said:

> It is the correct practice to procure, if practicable, an interpreter who is disinterested and who is not a witness in the case, and the trial judge is vested with a large discretion in the enforcement of this salutary rule of procedure; but neither the rule, nor the discretion in respect of it, runs to the extent of wholly rejecting an interested or related person as interpreter, even if the related person be a witness, when no other person is available who can adequately interpret for the particular person whose testimony is to be thus translated. And "where the action of the trial court in refusing to permit a competent interpreter to act deprives the party of the benefit of the evidence of a material witness, the error is a reversible one. * * * The simple fact that an interpreter is a relative of a party to the proceeding, or of the one whose evidence he interprets, will not render such interpreter incompetent. * * * That an interpreter, otherwise unobjectionable, has testified or will testify in the case, does not render him incompetent to act in such case in interpreting the testimony of a witness called by the party for whom the interpreter is a primary witness." 7 Ency. Ev. pp. 654, 655.
>
> Testimony was taken on the objection to the interpreter, and it was shown that although appellant is a person of intelligence, he is unable to communicate adequately in writing except in respect to the simpler matters of his daily life, and that in matters of any considerable detail or complication he is able to express himself completely only through translations by the daughter who was offered as an interpreter. She was shown to be a woman of education and good character, being a teacher in the public schools. To reject her as an interpreter was to reject the most nearly perfect way or means of interpreting the testimony of the witness, and throws the objection back upon the points of her interest and relationship—points which go merely to the credibility of the translation and not to the competency of the interpreter as such (cases cited).
>
> (*Morse* v. *Phillips,* 128 So. 336.)

In the case of *Alabama & V. Ry. Co.* v. *Kelly,* 126 Miss. 276, 88 So. 707, the court said in speaking of an interpreter for deaf persons:

> The fact that he may have been in sympathy with the plaintiff would not disqualify him from acting as the interpreter when there was no suggestion made during the trial that he had not correctly and honestly performed these duties.
>
> (At p. 709).

These decisions in cases involving the deaf are in line with the general principle that an interested person can act as interpreter if no other person is available. The matter is discussed in Corpus Juris Secundum, as follows:

> Furthermore, an interpreter has been held not to be disqualified or rendered incompetent merely because he is interested in the outcome of the particular suit of prosecution,* or because he is related to a party or witness in the proceeding,* or has had friendly relations with the parties,* or because he has been subpoenaed as a witness,* has listened to the testimony of other witnesses in the case,* or has, himself, testified or will testify,* or because, in a criminal case, he is a member of the police force.
>
> (21 C.J.S. 217, Courts, Sec. 141, *cases cited)

The rule is that the fact that the witness is related to the parties, or is friendly with them, or has some interest in the outcome of the case does not disqualify him from acting. These facts may be taken into consideration by the jury in deciding how much weight they should give to the testimony that was thus interpreted, but they do not prevent the interpreter from acting.

Where the court has approved the use of an interpreter who is an interested party, and the opposite side fears that the interpreter may falsely interpret the testimony, the proper procedure is for the opposite party to secure their own interperter who will be able to tell them if any mistakes are made in the translations.

When an interpreter is an interested party, the proper method of objecting to have him act as interpreter is as follows:

> Counsel—"Your Honor, I object to having Mr. John Smith act as interpreter in this case."
>
> The Court—"For what reason?"
>
> Counsel—"Mr. Smith is related by marriage to the prosecuting witness; and we fear that he will be biased."
>
> The Court (to opposing counsel)—"What do you say to that?"
>
> Opposing Counsel—"Your Honor, it is true that Mr. Smith is related to the prosecuting witness; but he is the only available interpreter at this time. Therefore, we must use him."
>
> Counsel—"Your Honor, that is not true. We have brought to court with us Mr. William Jones, who is equally well qualified as an interpreter; and he is not related to any of the persons involved in this case. I move that the court use Mr. Jones as interpreter instead of Mr. Smith."
>
> The Court—"We will use Mr. Jones. Proceed."

The objection to the use of an interpreter who is an interested party will only succeed if an alternate interpreter is provided. This should be considered before the case comes up for trial.

Statutes

Section 24–108 of the Tennessee statutes provides that whenever a deaf person is a party to a court action the court must appoint a qualified interpreter, the costs of the interpreter to be added to the costs of the case.

Section 269.55 of the Wisconsin statutes provides that whenever a deaf person is a witness or on trial and is unable to read and write, or upon a sanity investigation of such a person, the court shall furnish a competent interpreter, to be paid for by the government.

Section 253.053 of the Minnesota statutes has a similar provision in regard to furnishing interpreters in insanity hearings of deaf persons. The costs of the interpreters are to be paid for by the county.

Section 1278, title 22 of the Oklahoma statutes provides that an interpreter shall be furnished at the criminal trial of a deaf person, or when a deaf person is being tried for commitment to a mental institution.

The Illinois Revised Statutes, chapter 51, sec. 48.01 (drafted by the author and enacted in 1963) provide as follows:

> Whenever any deaf-mute person is a party to any legal proceeding of any nature, or a witness therein, the Court upon the request of any party shall appoint a qualified interpreter of the deaf-mute sign-language to interpret the proceedings to and the testimony of such deaf-mute person. In proceedings involving possible commitment of a deaf-mute person to a mental institution, the Court shall appoint such interpreter upon its own initiative. The Court shall determine a reasonable fee for all such interpreter services which shall be paid out of general county funds.

Such laws are very valuable and important to the deaf, and help to avoid miscarriages of justice. Their enactment should be encouraged in every State.

SECTION 9

Form of the Interpreter's Oath

It is fundamental, of course, that the interpreter must be sworn before he can act as interpreter in the case (*Kelly* v. *State*, 96 Fla. 348, 118 So. 1). If the interpreter were not sworn, he would be free to lie and misinterpret to the court and the jury. Without first taking an oath, the interpreter could not be found guilty of perjury if he lied to the court about what was said. After taking a proper oath, the interpreter can be convicted of perjury if he lies about the testimony (*People* v. *Walker*, 231 P. 572, 69 Cal. App. 475). This is an important precaution and should never be overlooked. If the interpreter is not properly sworn, an appellate court may order a new trial to be held.

The oath that is given to witnesses or interpreters is generally administered to them by the clerk of the court. A court clerk who is not familiar with the matter may attempt to use the same form of oath for the interpreter that he uses for ordinary witnesses. This is a mistake because the oath given to witnesses is not appropriate for an interpreter.

The witnesses' oath is usually something similar to the following:

> Do you swear by God that the testimony that you are now about to give is the truth, the whole truth, and nothing but the truth?

This does not properly apply to an interpreter because he does not actually testify; he interprets the testimony of other persons. Also, the interpreter does not pretend to know whether the testimony is the truth. He merely repeats it, regardless of whether he believes it is true or not.

The following oath for an interpreter is given in American Jurisprudence Pleading and Practice Forms:

> You do solemnly swear (or affirm) that you will justly, truly, and impartially interpret to —————————— the oath about to be administered to him, and the questions which may be asked him and the answers that he shall give to such questions, relative to the cause now under consideration before the court, so help you God.
> (15 Am. Jur. Forms 58, Sec. 92.)

This form is entirely adequate, but it is somewhat long and complicated. A court clerk reading it rapidly might make some misstatement that would leave the interpreter under some improper form of oath. A more simple form of oath and one that is still entirely adequate would be as follows:

> Do you swear by God that you will truly interpret to this witness and for this witness in this case?

It should be kept in mind that the oath must be given to the witness through the interpreter, otherwise the witness would not know that he has been sworn. It is also important to remember that the interpreter himself must be under oath at the time that he interprets the oath to the witness, otherwise there is no assurance that he correctly interpreted the oath itself.

The result is that the interpreter must be sworn first, then the witness is sworn through the interpreter. Then the testimony can be taken. No other sequence of events will be proper.

In most cases, the entire testimony at the trial is taken down in shorthand by a court reporter. In this way there is a complete record of the trial that can be used as the foundation for an appeal.

The customary practice of court reporters is that they do not take down the oath verbatim. They merely write in the record:

> The oath was duly administered.

This is done because the oath given to witnesses is usually a standard form, and the word "duly" shows that the standard form was used. But the court reporter should not be permitted to follow this practice where a deaf person is going to testify through an interpreter. In this situation the oath given may not be a standard form; and the question of whether or not a proper oath was administered may turn out to be an important matter. The court reporter should be instructed to take down the administration of the oaths verbatim. If the court reporter is employed by the court itself, a formal motion should be made to the court to make sure that this is done.

A proper record should read approximately as follows:

> The Court—"Let the witness be sworn."
>
> Counsel—"Your Honor, in view of the fact that the witness is deaf and is going to testify through an interpreter, I move that the court reporter be instructed to take down the administration of the oath verbatim, for inclusion in the record."
>
> The Court—"Very well. It is so ordered."
>
> The Clerk (to interpreter)—"Do you swear by God that you will truly interpret to this witness and for this witness in this case?"
>
> Interpreter—"I do."
>
> The Clerk (to the witness)—"Do you swear by God that the testimony you are now about to give will be the truth, the whole truth, and nothing but the truth?"
>
> The Witness (speaking through the interpreter)—"I do."
>
> The Court—"Proceed with the testimony."

SECTION 10

Methods of Interpreting for the Deaf

The language of signs in the United States is composed of two separate systems. One is the basic language of signs which constitutes a system of motions by the arms and hands and some pantomime. There is a basic vocabulary of somewhat more than 2,000 signs, but a person who is skilled in the system can usually communicate almost any idea through their use.

Of course, to communicate complex ideas by using a vocabulary of only 2,000 words may be a very difficult process. Every complex idea must first be explained, and only after full explanations have been made of all of the component parts, can the entire idea be communicated. For example, suppose that the following question is asked of a deaf person:

Were you examined by a psychiatrist at the hospital?

In order to ask this question of an educationally limited deaf person by using the language of signs it might be necessary to explain first to the witness what a psychiatrist is, and what an examination is when used in this context. Such a deaf person might not be able to comprehend the meaning of the question unless these preliminary matters were first explained to him.

The other method of communication is by the use of the manual alphabet. This is a system in which the fingers of one hand are used to indicate the letters of the alphabet. By using these symbols, it is possible to spell out any word that is needed.

Many years ago a system of alphabet symbols in which both hands were used to represent the various letters of the alphabet was also commonly used. This system had the advantage of being easily understood and learned by members of the public since the two-handed symbols are very good imitations of the letters of the alphabet that they represented. However, the two-handed system is much slower and not as convenient as the one-handed system. For this reason the deaf people use the one-handed system for communication among themselves, and the two-handed system has gradually become obsolete. The two-handed system is now used only in England, and only rarely may it be seen in this country. The term manual alphabet, when used in this country, always refers to the one-handed system of symbols.

Of the two basic methods of communication, the language of signs and the manual alphabet, some deaf persons may use only one of these systems and not the other. For example, an illiterate deaf person will use the language of signs but not the manual alphabet. However, most deaf persons know both systems and the term language of signs is generally used broadly to cover both, although actually they can be used independently of each other.

A judge or an attorney who knows that the manual alphabet can be used to spell out any word that is needed sometimes demands that the entire testimony of the deaf person be taken by the use of the manual alphabet, and that all questions and answers be spelled out literally. This procedure is almost always ineffective with an educationally limited deaf person because it serves no purpose to spell out words to him that he does not know. It should be kept in mind that the legal vocabulary of such a person may be very small, and that he may not know the meaning of such common legal words as defendant, plaintiff, lawsuit, arrest, wilful, and fraudulent when they are spelled out to him. However, he might understand such terms when they are explained to him through the use of both signs and fingerspelling.

The interpreter should always be allowed to use both systems in combination, in whatever manner he considers best. It should be understood by the court and the parties in the case that the interpreter often cannot just repeat literally what is said but frequently must first explain the ideas that are involved.

It has been held that the testimony of a deaf person may be obtained by any means that are necessary to that end (*State v. Howard,* 118 Mo. 127, 24 S.W. 41) and this rule should be liberally applied. Likewise it has been held that the appellate courts will not interfere with the discretion of the trial court in deciding upon the best method of taking the testimony of a deaf person (*Cleveland P. & E. Ry. Co.,* v. *Pritschau,* 69 Ohio St. 438, N.E. 663).

The interpreter should always repeat what the witness says. This means that the interpreter always speaks in the first person. He never speaks in the third person. The record of the trial should read as follows:

Correct Method—Transcript of Testimony

Question (by Attorney Smith)—"What is your name?"

Answer (by Witness Jones, speaking through Interpreter Brown)—"My name is Robert Jones."

Question—"Where do you live?"

Answer—"I live at 1234 North Street."

The transcript should not read as follows:

Incorrect Method—Transcript of Testimony

Question (by Attorney Smith)—"What is your name?"

Answer (by Witness Jones, speaking through Interpreter Brown)—"He says his name is Robert Jones."

Question—"Where do you live?"

Answer—"He says he lives at 1234 North Street."

The interpreter must try to repeat exactly what the witness says because he is the "voice" of the witness; which means that the interpreter is almost always speaking in the first person. He should not describe what the witness says, as if he were a commentator, and speak in the third person. The above examples show the difference between the two methods.

Very frequently an interpreter is forced to attempt to describe in words a complex "picture" that has been drawn in signs by the witness. For example, when a deaf person is asked, "Where were you hurt?", he may answer by pointing to a certain spot on his leg and making certain descriptive motions. The interpreter then has a wide choice of possible interpretations. He can answer by saying, "I was hurt on my leg." Or he can answer by saying, "I was hurt on my left leg"; or "I was hurt on my lower left leg"; or "I suffered a fracture of the bone in my leg"; or "I broke a bone on the side of my lower left leg just above the ankle." All of these possible answers may be acceptable interpretations of the deaf person's motion in pointing to a certain spot on his leg. This example illustrates the very great importance of the interpreter. Two interpreters watching the same person could arrive at considerably different interpretations of what he is saying.

There are many other peculiar facts about the language of signs. There is an absence of certain words that are present in almost every ordinary language. Some words indicating complex relationships may be difficult to interpret in signs for lack of any sign that corresponds to the necessary word. For example, as previously mentioned, the question, "Where were you standing with relation to the street corner at the time of the accident?" is very difficult to interpret literally to the verbally limited deaf person for lack of any sign that would convey the meaning of the phrase "with relation to". In order to make such a person understand this question, the highly sophisticated idea of "in relation to" might have to be broken down into its components. The question may be put this way. "Were you standing at the time of the accident?" "Were you facing the street corner?" "Could you see the street corner from where you were standing?" "How far from the street corner were you?" "In what direction was the street corner?" If the lawyer does not simplify his language and his questions in this way the interpreter probably may be compelled to do so for him.

Very often a lawyer will ask a question of a deaf person on the witness stand, and there will follow a long conversation between the witness and the interpreter which will end up by the interpreter making a simple yes or no answer. This procedure will, of course, create the gravest suspicions in the minds of the lawyers, the judge, and the jury. But, this is no fault of the interpreter. It is rather the fault of the lawyer in using language that cannot be easily translated.

There are a great many problems of this kind that the interpreter will meet and he must handle them as best he can. Such matters cannot be considered errors. But there are many other matters during the course of a typical trial in which the action of the interpreter may be definitely wrong. These are matters not involving mere differences of opinion but actual mistakes on the part of the interpreter.

Errors in Translating

The most common mistake of interpreters is to reject an answer given by the witness and to refuse to translate it because the interpreter feels that the witness has misunderstood the question, or that the answer is not appropriate. For example, in one case a deaf person was testifying on the witness stand and he was asked the question: "Why did you have two rearview mirrors on your car at the time of the accident?" The attorney expected the witness to say: "Because the law requires deaf persons to have two mirrors on their cars" or some such answer. But instead of answering the question this way, the witness said: "In order to see backwards." When the witness gave this answer, the interpreter (who knew what answer the attorney wanted to get) shook his head to say no to the witness, did not translate his reply, and repeated the question.

This action on the part of an interpreter is entirely wrong. He should not edit what the witness says or refuse to translate something that he thinks is inappropriate. On the contrary, he must translate everything that the witness says regardless of whether he thinks it was the wrong thing to say.

Another common error of interpreters is to fail to understand that small differences in wording may be very important in a particular case. The interpreter should be very careful not to add words or to subtract words from what was said. For example, if a deaf witness says, "About 5 feet," the interpreter should not say, "5 feet," leaving out the word "about." If a witness says, "A few hours," the interpreter should not change this to say, "2 or 3 hours." If a witness says, "I think I was driving about 20 miles an hour," the interpreter should not shorten this to say, "I was driving 20 miles an hour." Such words as "I think," "about," "probably," may have great legal meaning.

Where an interpreter has made an error in interpretation, the matter must be brought to the attention of the court immediately, and the correct interpretation must be given to the court at once. The correct procedure is as follows:

Assume that a deaf person is suing the city for a fall on a broken sidewalk. The city is defending on the ground that the deaf person did not fall because of the broken sidewalk but because of ice on the sidewalk (for which the city is not responsible).

> Question (by attorney for the city)—"Did you slip on the sidewalk?"
>
> Answer (by the witness speaking through Interpreter Brown)—"Yes."
>
> Attorney for the deaf person—"One moment, your honor. I object to the action of the interpreter. The question was 'Did you slip on the sidewalk?' and my own interpreter, Mr. Smith, has just told that the question was given to the witness in the form of: 'Did you trip on the sidewalk?' The question was misinterpreted to the witness. I move that the question and answer be stricken from the record, and I move that the question be repeated and translated properly."
>
> The Court (to attorney for the city)—"What do you say about that?"
>
> Attorney for the city—"Your Honor, our interpreter, Mr. Brown, says that he interpreted the question properly as slip. We do not feel that there has been any mistake. We now move for judgment in favor of the city on the ground that the witness has admitted that he slipped."
>
> Attorney for the deaf person—"Your Honor, the interpretation was incorrect. I now offer to put my interpreter on the witness stand and have him testify that there has been a mistake here."
>
> The Court—"I will strike the question and the answer from the record and we will try it again."
>
> Question (by attorney for the city)—"Did you slip on the sidewalk?"
>
> Answer (by the witness speaking through Interpreter Brown)—"No, I tripped."
>
> The Court—"Apparently a mistake was made the first time. Let us proceed."

It is apparent that each attorney must have his own interpreter at his side at the trial. If the proper objection is not made at the right time during the trial, it usually cannot be made later.

There is a large amount of published material on the use of the language of signs. Some excellent practical handbooks are: "Talking With the Deaf" by C. J. Springer, published by the International Catholic Deaf Association; "Talk With Your Hands" by David Watson, published with the endorsement of the National Association of the Deaf; "Say It With Hands" by Louie J. Fant, Jr., of Gallaudet College; and "Talk to the Deaf" by Lottie L. Riekehof, published by the Gospel Publishing House.

SECTION 11

Statements Made in Conversations Through an Interpreter

It frequently happens that a deaf person has a conversation with a hearing person through an interpreter. Later, a dispute arises as to what the two persons said to each other. It has been held that where two persons talk to each other through an interpreter, each of them has impliedly appointed the interpreter as his agent, and the interpreter may testify as to what each of them said (*Terrapin* v. *Barker*, 26 Okla. 93, 109 P. 931).

When the matter is tried before the court one of the persons in the conversation may try to testify as to what the other person said. It has been held that this cannot be done unless the interpreter is also present as a witness to testify that he interpreted the conversation properly (*Szczech* v. *Chicago City Ry. Co.*, 157 Ill. App. 150, physician speaking to patient through an interpreter; *Vukmanovich* v. *State Assurance Co. of Liverpool, England*, 82 Mont. 52, 264 P. 933, insurance agent speaking to customer through an interpreter).

This rather confusing situation is best explained by means of an illustration. Suppose that a deaf man buys an automobile from a dealer, and the negotiations are carried on through an interpreter. The dealer guarantees verbally that the car will run properly for 30 days and the deaf person agrees verbally to pay $400 for the car. The car turns out to be defective and the deaf man sues the dealer. At the time that the case comes up for trial, assume that the person who acted as interpreter has left the State and his present address is unkown. The trial of such a case would probably be somewhat as follows:

> Attorney for the deaf man—"Did you have a conversation with the dealer before you brought the car from him?"
>
> Deaf Man—"Yes I did. Mr. Brown was the interpreter between us."
>
> Attorney—"What did the dealer say to you?"
>
> Deaf Man—"He guaranteed the car for 30 days."
>
> Attorney for the dealer—"Your Honor, I object to that question and to that answer. The witness has no possible way of knowing what the dealer said. He only knows what the interpreter told him. He cannot prove the contents of the conversation without producing the interpreter as a witness. This deaf man cannot testify to a conversation that he did not hear himself."

> The Court (to attorney for the deaf man)—"Do you have the interpreter in court to testify as to the contents of this conversation?"
>
> Attornery for the deaf man—"Your Honor, he has left the State and we cannot find him."
>
> The Court—"Unless you have other proof of this conversation, I will have to dismiss this case. You cannot prove the conversation by the testimony of this deaf man without the interpreter."

The same ruling might likewise make it impossible for the dealer to prove that the deaf person agreed to pay $400 for the car, unless the dealer could produce the interpreter as a witness.

Destruction of Notes Where No Interpreter Was Used

Assume that a deaf man had a conversation with another person of normal hearing and instead of using an interpreter they wrote notes back and forth to each other. The notes may contain important statements of fact, or the parties may have arrived at a contract or an understanding by the use of these notes. Suppose further that these notes were taken by the person who had normal hearing and were in his possession. Later, that person may wish to sue the deaf man on the contract that was made through the notes, or he may wish to prove that the deaf man made a statement that was set forth in one of the notes.

When the matter comes up for consideration in court he will be required to produce the original notes, if he still has them. If he states that he destroyed the notes, he will be required to explain exactly how and why he destroyed them. If it appears that his destruction of the notes was malicious or fraudulent in intent, he will not be permitted to testify in court as to what the notes stated. If this happens, he may be completely unable to prove the existence of the contract, or the fact that the statement was made.

This is one of the applications of a rule of evidence that is known as the "best evidence rule." See the following cases: *Blake* v. *Fash,* 44 Ill. 303; *Palmer* v. *Goldsmith,* 15 Ill. App. 544; *Bauer* v. *Glas,* 244 Ill. 627; *Scott* v. *Basset,* 194 Ill. 602; 32 C.J.S. 752, Evidence, Sec. 824; 20 Am. Jur. 391, Evidence, Sec. 438.

One of the purposes of this rule is to discourage persons from deliberately destroying documents with the hope of being able later to misrepresent their contents. This rule frequently applies to cases involving deaf persons where notes were written back and forth between the parties.

SECTION 12

Contracts by Deaf Persons

Under the ancient common law a deaf-and-mute person was considered incapable of making a valid contract (Bracton Lib. 2 f. 12, Fleta Lib. 6 c. 40). The theory was that such a person would be unable to comprehend the true nature of the contract he entered into, and could be easily tricked into signing contracts that would be very harmful to him. To protect deaf persons from being imposed upon, the courts refused to enforce such contracts.

Although this viewpoint protected deaf persons against harmful contracts, it also greatly limited their freedom and hampered them in their economic life. They could not enter into business, could not obtain credit, and were restricted at every turn.

At the present time the courts have adopted the alternate theory and now hold that contracts entered into by such persons are valid. This means that the deaf can now enforce their contracts; but it likewise means that contracts can be enforced against them. The deaf now have great freedom of action, but with that freedom has come a corresponding responsibility.

An examination of typical cases will show the nature of the problem and how the courts handle such problems at the present time.

In the case of *Barnett et al.* v. *Barnett*, the Supreme Court of North Carolina considered the question of the ability of deaf persons to make valid contracts, and said:

> (54 N.C. 221.)
>
> In the earlier history of the law, a person who was born deaf and dumb was considered to be an idiot. That period has long passed, and the question as to their legal ability to make a contract is placed on its proper ground—their mental capacity.
>
> (At p. 222.)

The courts generally follow this principle. In the case of *Alex* v. *Matzke*, 151 Mich. 36, 115 N.W. 251, a man 27 years old had been deaf from the age of 3. His abilities were described by the court as follows:

> He can write his name, and read a little in German. He has never been instructed by the usual methods used by deaf-mutes to communicate with others. He communicates with some of his family by the use

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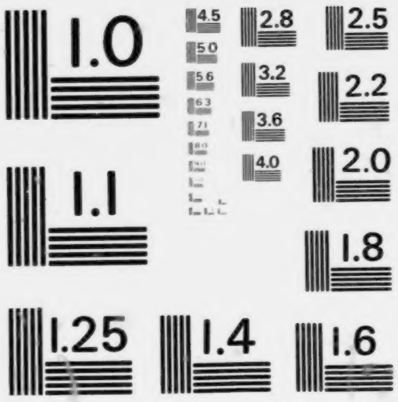
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> of motions and a limited number of signs, and watching the movement of the lips.
> (At p. 251.)

He entered into a written contract in which he agreed to do manual labor in exchange for room, board, and other services, but without pay in money. After working for many years, the deaf man brought suit against his employer for the value of the work that he had done, claiming that he had not really understood the terms of the contract. The jury gave judgment in his favor. The employer then appealed to the Michigan Supreme Court on the ground that the contract was binding upon the deaf man, and therefore he could not recover. The Michigan Supreme Court said:

> The old doctrine that a deaf-mute was presumed to be an idiot (i.e. non compos mentis) no longer prevails. * * * The courts now hold that a deaf-mute is not incapable of entering into contracts if shown to have sufficient mental capacity.
> (At p. 252.)

The court held that he had ordinary intelligence and that the terms of the contract had been made reasonably clear to him before he signed it. Therefore, he was bound by the contract and could not recover from the employer.

A somewhat similar case was that of *Bunde* v. *Bunde's Estate*, 214 Mich. 469, 183 N.W. 16, in which a deaf man was unable to recover for the value of services that he had rendered over many years to his brother.

In the case of *Selenak* v. *Selenak*, 150 Ill. App. 399, a deaf man worked for many years for a close relative, without pay except for his room and board. After a number of years had gone by, he sued for the value of the work that he had done. The court explained that where a person does work for a member of the family, there is a presumption that the work was done free of charge, as a gift.

But in this case the deaf man had not been treated as a member of the family because he had been made to sleep in the barn and had been ill-treated in other ways. The Illinois Appellate Court therefore held that the usual rule did not apply and he was entitled to recover for the value of the work that he had done. So, in this case the ill treatment of the deaf person turned out to be an expensive matter for the relatives.

The fact that a deaf man cannot hear or speak does not in itself prevent him from entering into a legally binding contract. In the case of *Russell* v. *Rutledge*, 158 Ill. App. 259, the Illinois Appellate Court held that a valid contract could be made by the action of the deaf man in nodding his head in consent, and nothing further was needed.

A very interesting case is that of *Brown* v. *Brown*, 3 Conn. 299, in which a deaf person signed an important contract transferring his real estate while he was close to death. The man had been deaf from birth and could not read or write. An attempt was made to set aside the transaction on the ground that he did not know the nature of the document he was signing, and that it would have been impossible to make him understand the legal distinctions involved due to the inadequacies of the language of signs.

The Supreme Court of Connecticut said:

> The merits of the controversy depend entirely on the question, whether the grantor had capacity sufficient to execute the deed. It appears that he was deaf and dumb from his nativity; and on that fact the plaintiff urges that the deed was invalid. It was found by the jury that the grantor had understanding sufficient to enable him to execute the deed; and the court adjudged that his being deaf and dumb constituted no incapacity. If, superadded to the deprivation of the two senses before mentioned, the grantor had been blind, he would be considered in law as incapable of any understanding, being deficient in those inlets which furnish the human mind with ideas. But this is not predictable of persons who, from their nativity, are deaf and dumb only.
> (At p. 303.)

The court therefore held that the transaction was valid and could not be set aside.

Some other State supreme courts, however, are inclined to be somewhat more lenient in regard to whether deaf persons are bound by their contracts. In the case of *Fewkes* v. *Borah*, 376 Ill. 596, 35 N.E. 2d 69, a man 75 years of age had been deaf all of his life. He lived alone. Two men came to his house and induced him to sign an oil and gas lease on certain real estate that he owned. He testified that he could read the lease, but not the small print; that he did not understand what he was signing, and that he signed only because he was afraid of the men. He sued to set aside the transaction.

The Illinois Supreme Court said:

> There is, however, sufficient evidence of plaintiff's infirmity to require that those dealing with him use utmost good faith.
> (At p. 72.)

The court ruled in favor of the deaf man, and this case sets forth the principle that those dealing with a deaf person of limited comprehension are required to use utmost good faith.

In the case of *Wendell* v. *Payne*, 89 W. Va. 356, 109 S.E. 734, a totally deaf man was struck by a railroad train and badly injured. While he was still in the hospital in great pain, an agent from the railroad came to see him and told him by writing notes that the company would pay for all of his medical bills.

The agent told the deaf man that if he wanted to stay in the hospital and get better and have the railroad company pay for the medical bills, he would have to sign a release. The deaf man replied that he wanted to stay in the hospital, and that he would sign the release if it was necessary. He signed the release without reading it because he did not have his glasses with him in the hospital.

The release form provided that he was giving up all of his rights against the railroad for his injuries, pain, suffering, loss of wages, etc. The deaf man later claimed that the release form was invalid because it had been fraudulently obtained. The railroad claimed that since a deaf man had the power to make valid contracts, he was bound by the release form that he had signed.

The Supreme Court of West Virginia considered all of the circumstances of the case, including the man's deafness, and held that the release was invalid under those circumstances, and that the courts would refuse to enforce it.

In the case of *Collins* v. *Trotter*, 81 Mo. 275, the Supreme Court of Missouri set forth a different principle of law in an effort to protect deaf persons from the consequences of contracts that they have entered into. In this case two deaf persons had signed a promissory note. When they were sued on the note, they contended that they were incompetent to defend themselves in court because of their disabilities. A petition was filed in the probate court to have a guardian appointed for them to defend them in the litigation.

The Missouri Supreme Court stated:

> In this case, the persons in ward, being deaf-mutes, were prima facie incompetent to make any contract (1 Greenleaf Ev. sec. 366). And the burden of showing their competency in this regard was on the plaintiffs. (At p. 282.)

Since the plantiffs had failed to prove at the trial that the deaf persons were competent to make a contract, the note was held to be invalid.

The above cases show that there are three different viewpoints that the courts have applied to this problem:

1. That deaf person are fully competent and will be held to the contracts in the same manner as those of normal hearing.
2. That those dealing with a deaf person must use good faith.
3. That those suing a deaf person have the burden of proving that the deaf person was competent to enter into a contract.

The first viewpoint is the one that is followed most frequently. Therefore, those who counsel the deaf should caution them to be very careful about signing important contracts. It should never be assumed that a contract can be voided merely because the person is deaf.

It is generally no excuse for a deaf person to say that he looked over a contract but did not actually read it. If the contract was put before him and he knew how to read; it was his responsibility to read it before signing. It is impossible to force a person to read something; or to tell whether he is reading a document or merely looking at it. If a document is put before him and he fails to read it, the omission is his own fault, ~~not that of the~~ other party.

Likewise, it is generally no excuse for a deaf person to say that he read a document but did not understand it. Very few persons who are not trained in law understand the full legal significance of the documents that they sign. If a person reads a document and does not understand it, it is his responsibility to obtain legal advice before signing it. He generally will not be allowed to use his own ignorance or carelessness to gain an advantage over the other party to the contract.

To sign a contract without proper advice can be an extremely dangerous and costly matter. The contract may provide for expensive penalties, for costly finance charges, for large installation or service charges. It may provide for monthly payments of $10 (which the customer is told about) and a final payment of $500 (which the customer is not told about). The contract may incorporate a wage assignment, a judgment note, a chattel mortgage, and waivers of many legal rights. It may provide that the buyer does not get title to the items involved for long periods of time (contrary to what he is told).

The customer may be told that the items are guaranteed, but the actual guarantee clause in the contract may be so ineffective as to afford no legal protection. Hearings held in 1962 by the U.S. Senate Subcommittee on Antitrust and Monopoly produced a very large number of complaints about the methods that were used to sell certain brands of hearing aids.

Those counseling the deaf should instruct them never to sign a blank form of contract, to see that all blanks in a contract are properly filled in, to see that all terms of the contract have been put in writing, to obtain proper advice before signing, and always to obtain a copy of the entire final contract. Since it is now generally accepted that the deaf have a legal right to make valid contracts, it is important that they use great care in deciding what contracts they will enter into.

When a deaf person is unable to pay some bill that he owes, the bill may be turned over to a collection agency which will try to collect it. Most collection agents act in a proper manner in performing their activities. However, a collection agent who is dealing with a deaf person of limited education may be tempted to take advantage of the deaf person's limitations by using improper collection methods. The collection agent may send out forms to the deaf person which imitate legal process forms issued by a court, but really are not. He may threaten criminal prosecution if the debt is not paid. He may threaten to report the matter to the FBI, and he may use other ridiculous threats in an effort to frighten the deaf person who owes the money. Such absurd threats would have no effect upon a person who knows his legal rights, but they may be very successful with a person who is naive on legal matters. In such cases, a telephone call by some friend of the deaf person to the collection agent, warning him to cease his improper collection methods, will almost always cause the collection agent to stop.

Most persons who are deaf from early childhood are educated at special state schools for the deaf. Since the school may be located far from home, the deaf child generally lives at the school and returns to his home only for holidays and vacation periods. Many deaf children therefore spend most of their time in a carefully protected school environment where fair and proper treatment is the rule. When the child completes his education at about the age of 18 years, and enters the outside business world, he is apt to assume that he will continue to receive the same kind of fair and considerate treatment that existed in the school environment in which he was brought up. Counselors of the deaf should advise them never to sign any important contract without first having it read and approved by some reliable person.

SECTION 13

Bankruptcy Petitions by the Deaf

It frequently happens that a deaf person will make serious mistakes in handling his financial affairs and end up deeply in debt. His wages may be tied up with garnishment actions and his property may be attached by his creditors. His employer may be unwilling to get involved in the garnishment actions and may warn him that if he does not take care of the matter in one way or another he will be fired.

In this situation the deaf person may remember that he has heard something about "going bankrupt" and he may wonder whether or not this is a good solution to his problems. The laws relating to bankruptcy are very complicated and it may be difficult to explain all of the aspects of the matter to the deaf person clearly enough to enable him to arrive at a wise decision. However, it is important that he should at least understand the fundamental ideas that are involved so that he can make an informed decision.

The bankruptcy law is a Federal law (Title 11 of the United States Code) and it is, therefore, available for use in every State. The basic idea behind the Bankruptcy Act is that the person makes a list of all of his debts and a list of all of his property and files these lists in the Federal court. All of his property is then turned over to a Federal receiver who sells it and uses the money for the benefit of the creditors. All of the debts on the list that is filed in court are then discharged by Federal law.

There are some debts such as taxes, alimony payments, etc., that cannot be discharged in a bankruptcy proceeding; but most ordinary debts for loans, goods bought on credit, medical bills, etc., can be discharged. The bankrupt is allowed to keep a certain small amount of property, such as ordinary clothing and some furniture and personal items. All of his other property must be given up. If he has bought automobiles or other goods on conditional sale contracts or on chattel mortgages, the goods must be returned to the seller.

The purpose of the bankruptcy law is to give people an opportunity to make a new start in life, without having to pay their old bills. The law provides that if a person has filed a petition in bankruptcy he must wait 7 years before filing another one.

There are many special facts about bankruptcy that should be explained to a person before he decides to file a petition. First, it should be explained that if a debt is not listed on the schedules that are filed in court, the debt will not be discharged. It is vitally important that all debts are correctly listed on the schedules and that none are left out. For example, the person should list any debts that he signed as a cosigner, even though no claims have been made against him yet. Second, it should be explained that all property must be given up, with a few exceptions set forth in the law, and that the person will not be allowed to keep anything that is valuable. Third, it should be explained that there are some debts that cannot be discharged in bankruptcy and that he will have to pay them anyway.

One of these is a debt incurred by fraud. For example, when a person borrows money from a loan company, the loan agent will often give the person a loan application form to fill out. The form asks him to list all of the debts that he has at that time. The person may list two or three debts and he may be about to complete his list. The loan agent may then stop him and say, "That's enough. You don't have to put the rest of your debts down." Later, when the person files a petition in bankruptcy, the loan company may claim that the loan was incurred by fraud because the person failed to list all of his debts on the loan application form. The loan company may then claim that this debt cannot be discharged in bankruptcy, due to the "fraud". For this reason, a person who fills out a loan application form or a credit application should always be very careful to fill it out accurately. A deliberate mistake in the application form may later make the debt nondischargable in bankruptcy. However, where the mistake is actually caused by the loan company itself, this is not fraud.

A debt may also be nondischargable in bankruptcy if it was for goods that were sold on conditional sale contract, and the person cannot return the goods to the seller because he sold them to someone else. Another common type of debt that is nondischargable is a debt arising out of an automobile accident where the person was guilty of willful misconduct.

A person who goes through bankruptcy sometimes gets a bad record as a credit risk, and he may later find it hard to obtain credit. This is not always true, however. In some cases, a person who goes through bankruptcy may be considered a better risk than another person who has not gone through bankruptcy. The reason is that a person who has once gone through bankruptcy cannot do it again for 7 years. This may make him a better credit risk for the future since this resort of escaping his later debts is now gone. For this reason, a person who is making a large loan may sometimes require the borrower to go through bankruptcy before he will consent to make the loan. Once the borrower has gone through bankruptcy, the lender will feel more secure about lending money to him.

After a person has gone through bankruptcy and a debt has been discharged, he generally does not have to pay the debt unless he wants to. However, he can reaffirm the debt if he so desires. This can be done by signing a reaffirmance agreement, or in other ways.

After a person has gone through bankruptcy, his creditors frequently try very hard to get him to sign reaffirmance agreements. They may offer to sell him more goods on credit, or make more loans to him if he will reaffirm the original debt. The debtor should be cautioned against doing this unless he fully understands what he is doing. Such reaffirmance agreements are sometimes put in such a form as to make them look as innocent as possible.

The bankruptcy law fulfills an important social purpose and it is, of course, very useful and helpful to those who need it, but a bankruptcy petition should never be filed unless all of the aspects of the matter have been fully explained to the person, and he clearly understands what he is doing.

SECTION 14

Insurance Matters Involving the Deaf

Insurance policies are frequently long and complicated documents, filled with conditions, exclusions, exceptions, limitations and qualifications, all expressed in highly technical language. A person generally buys an insurance policy by going to an insurance agent and telling the agent what kind of insurance he wants. He then pays the premium and later the insurance policy is mailed to him. The person then believes that he is covered against the risks that he wished to be protected against. In actuality, however, the person may not be covered at all, even though he has the insurance policy in his possession.

Insurance companies frequently refuse to pay claims for any one of three different reasons: First, they may claim that the insured made some incorrect and fraudulent statement in his application for the insurance policy, which voids the policy. Second, the insurance company may claim that the exact wording of the policy does not apply to the particular accident that occurred. Third, the insurance company may claim that the insured did not file his claim in the proper manner as required by the policy.

Special problems concerning the deaf have arisen in each of these areas.

Statements in Insurance Applications

When the application for the insurance policy is being filled out, the insurance agent generally asks the questions of the insured and writes down the answer on the application form. The agent then asks the insured to sign the application. Where a deaf person is involved, the agent may misunderstand what the deaf person has said and write down something that is incorrect. Likewise, the deaf person may misunderstand the agent's questions and give a wrong answer.

If the insured does not know the answer to the question, the insurance agent may fill in an answer that he knows is incorrect. He may do this for the purpose of making it possible for the insurance company to avoid paying any later claims that are made on the policy. For example, the application form a fire insurance policy on a home may ask, "How close is the nearest fire hydrant?" The insurance agent himself may fill this in to read "50 feet" although the agent knows that this probably is not true. Later, if the home burns down, the insurance company may refuse to pay on the ground that the nearest fire hydrant is considerably more than 50 feet away. Therefore, it is extremely important for the person buying insurance to examine the application form very carefully to make sure that the agent has not placed an incorrect statement on it. Naturally, in this situation the insured should not place any reliance on the insurance agent if he says that such incorrect statements "do not matter".

The case of *Inter-Ocean Casualty Co.* v. *Ervin,* 229 Ala. 352, 156 So. 844, involved a deaf woman who took out an insurance policy in favor of her brother who was also deaf. Later, she accidentally fell from a porch and paralysis and death followed a few days later. The insurance company refused to pay on the policy because the application form contained the following statement: "Neither my hearing nor vision is impaired." At the trial it was proved that neither of the deaf persons were able to read this statement contained in the application, and they did not know that the agent had allowed this statement to remain in the application form. The Alabama Supreme Court held that the beneficiary was entitled to recover on the policy in spite of the incorrect statement in the application form.

However, in the case of *Colaneri* v. *General Accident Assurance Corporation, Ltd.,* 126 A.D. 591, 110 N.Y. Supp. 678, the New York Supreme Court, Appellate Division, reached the opposite result in a somewhat similar case. In this case the deaf man also could not read. He filled out the application form with the help of the insurance agent. The papers contained the statement that "the applicant has never received any injury or suffered from any disease or sickness of any kind". Actually, the insured had suffered from ear trouble some time before. After the policy was issued, he became very sick with ear trouble and filed a claim on his health insurance policy. The company refused to pay due to the false statement in the application form, and the court ruled in favor of the insurance company.

In the case of *Follete* v. *Mutual Accident Ins. Co.,* 110 N.C. 377, 14 S.E. 923, a deaf man bought an accident insurance policy. The insurance agent failed to put the fact of deafness down on the application form. When the man was later injured, the insurance company refused to pay. The North Carolina Supreme Court refused to allow the insurance company to escape liability in this manner. The Court said:

> The defendant now contends that the representation by the plaintiff that he was free from bodily infirmity was false and fraudulent, and constituted a material inducement to the defendant to issue the policy. Ordinarily the defendant could avoid the performance of the contract by showing the falsity of a material statement in the application. But the plaintiff, where representations contained in the application are admitted to be untrue, may rebut the presumption of fraudulent intent arising from such admission, by showing that the local agent of the company, with full knowledge of the falsity of the statement, entered the answers of the insured, and forwarded the application approved by his own indorsement. We cannot give the sanction of this court to the doctrine that a local agent may scream into the ear of a deaf person solicitations to apply for an accident policy; write for him an answer, which he knows at the time to be untrue, to a question in the application; procure the policy; receive the premiums as they fall due; and, when the insured becomes prostrate from a wound, stand aside at the bidding of the principal, and allow it, with the premiums in its coffers, to avoid the contract on account of a statement known by the agent to be false when he prepared it for the applicant's signature.

In the case of *Aetna Life Ins. Co.* v. *Millar,* 113 Md. 686, a man was suffering from an infected ear when he applied for an insurance policy. The insurance agent told him that it was not necessary for him to mention the ear trouble on the application form. When the man later developed mastoiditis, the insurance company refused to pay, claiming that the untrue statement on the application form voided the policy. The Supreme Court of Maryland held that the jury should decide whether or not the man had made the false statement in good faith; and whether the false statement was material or immaterial.

The conclusion that can be drawn from these cases is that a deaf person should be very careful to see that the insurance application clearly states that he is deaf; and that no incorrect statements appear in the application due to any misunderstanding with the insurance agent. If a deaf person later finds out that he has filed an application containing a false statement, he should immediately inform the insurance company of that fact by registered mail. If the company continues to keep the policy in force after they have been informed of the deafness or other facts, then they will not be able to use this later as an excuse for not paying on the policy.

Where a false statement has been made in an insurance application, the courts frequently hold that the insurance company cannot avoid making payment that is due on the policy unless they can show that the false statement materially affected the risk that was assumed by the company. In other words, the court may hold that the misstatement must be proven to be material and significant in character; an immaterial misstatement would not be important. In this connection it should be noted that the

National Fraternal Society of the Deaf, which sells life insurance only to deaf persons, has a mortality rate that is substantially lower than that of the average of the 25 largest insurance companies in this country. The mortality rate of actual deaths to expected deaths per the standard tabular table was about 42 percent for the National Fraternal Society of the Deaf, as compared to 50 percent for the average of 25 largest life insurance companies. (See reports of Standard Analytical Service of St. Louis, Mo., for 1963.)

If the average mortality rate of deaf persons is lower than that of persons who do not have this handicap, then a false statement in regard to hearing ability in a life insurance application would appear to be quite immaterial; and such a false statement should not be adequate grounds for refusing to pay on the policy.

The factors to be considered in problems of this kind are:

1. Whether the statement was actually false.
2. Whether or not the insurance company (by its agent) induced the deaf person to make the false statement.
3. Whether or not the insurance company or its agents knew that the statement was false, either at the time of the application or at a later time.
4. Whether the false statement was material or immaterial in view of the nature of the risk that was insured under the policy.

Disability Insurance

There have been many cases on the question of whether deafness is a sufficient disability to enable an insured person to recover on a disability insurance policy. The deafened person is likely to claim that he has been disabled from carrying on his previous occupation, while the insurance company is likely to point out that he is still able-bodied and capable of working.

In the case of *Patterson* v. *Metropolitan Life Insurance Co.*, 194 La. 106, 193 So. 478, the plantiff worked for many years for the Union Producing Co. as an oil field worker. He gradually lost his hearing while working for them. He had an insurance policy that provided for payment if he:

> * * * has become totally and permanently disabled as a result of bodily injury or disease, so as to be prevented thereby from engaging in any occupation and from performing any work for compensation or profit * * *

The insurance company refused to pay him on the ground that, although he could not work as an oil field worker (they had fired him from his position) he was still capable of doing other kinds of work, and therefore he was not totally disabled as required by the policy.

In regard to this problem the Louisiana Supreme Court said:

> * * * the words "total disability" within the meaning of a policy similar to the one involved in this case do not mean absolute helplessness, but rather the inability to do substantially or practically all the material acts in the transaction of the insured's regular occupation or business in the usual or customary manner.

Therefore, it was held that the deaf man was totally disabled within the meaning of the policy, and he was entitled to the insurance benefits.

Likewise, in the case of *Nomey* v. *Pacific Mutual Life Insurance Co.*, 212 La. 826, 33 So. 2d 531, the insured had a disability insurance policy. He was a self-employed businessman. He had lost from about 60 to 80 percent of his hearing, which the expert witnesses testified as being equivalent to total deafness for all practical purposes. The court held that this was total disability under the meaning of the policy.

Where a man lost over 95 percent of his hearing and was discharged from his position as a chief railroad dispatcher due to his deafness, it was held that he was totally and permanently disabled, although he was later able to operate a small business for himself (*Kane* v. *Metropolitan Life Ins. Co.*, 228 Mo. App. 649, 73 S.W. 2d 826).

Where a man lost over 50 percent of his hearing at the age of 43 and was discharged from his railroad position due to deafness, he was held to be totally disabled, although he was later able to go into business for himself (*Oswald* v. *Equitable Life Ass. Soc.*, 128 Neb. 173, 258 N.W. 41).

Where a man suffered a loss of hearing of 75 percent and loss of vision of 50 percent, it was held to be a question for the jury whether he was totally and permanently disabled within the meaning of a disability insurance policy (*Aetna Life Ins. Co.* v. *Castle*, 252 Ky. 228, 67 S.W. 2d 17).

On the other hand, in the case of *Rudy* v. *New York Life Ins. Co.*, 139 Pa. Sup. 517, 12 Atl. 2d 495, a man was struck on the head while working as a law enforcement officer. The injury caused him to lose his hearing and this resulted in his losing his employment. He applied for benefits under his disability insurance policy, but the court held that he was still capable of doing manual labor and therefore he was not disabled within the meaning of the policy and he could not recover under the policy.

Likewise, when a common laborer employed in a coal mine was forced to leave that employment because it was dangerous for him to work there due to his deafness, it was held that he was not totally disabled when he was capable of working as a common laborer for other types of businesses (*Equitable Life Assur. Soc.* v. *Powers*, 254 Ky. 770, 72 S.W. 2d 469).

Of course, a minor inflamed condition of the ear canal does not constitute a total and permanent disability (*Equitable Life Ass. Soc.* v. *Burns*, 254 Ky. 487, 71 S.W. 2d 1009).

Unlawful Acts

Many accident insurance policies contain a clause providing that the insurance company does not have to pay if the insured is injured while performing some unlawful act. The question of deafness may be important in determining whether a particular act was lawful or unlawful.

For example, in the case of *Hamblet* v. *Mutual Union Insurance Co.*, 120 Wash. 31, 206 P. 836, a deaf man was walking down the street at about 8 o'clock in the evening. A robbery had been committed in that neighborhood some time earlier. A policeman approached him and called on him to halt. The deaf man, thinking that the policeman was a robber, ran away. The policeman fired his gun and the deaf man was shot and killed.

The dead man's insurance company refused to pay on the insurance policy because they claimed that when he had failed to halt when the policeman told him to do so, he was committing an unlawful act (failing to obey a policeman in the performance of his duties). The insurance policy expressly provided that no payment would be made if the insured was injured during the course of any unlawful act.

The Supreme Court of the State of Washington held that there was no unlawful act because the deaf man had not been able to understand the situation due to his deafness. The court said:

> The statute, it will be observed, is directed against willful action. To do a thing willfully imports that it is done with knowledge. Hence no one can be said to have willfully resisted the command of an officer unless he knew it was an officer who gave the command.

Since the deaf man could not hear well enough to understand that a police officer was making an official order, he was not guilty of willful or unlawful conduct, and the insurance company had to pay on the policy.

Making Insurance Claims

Insurance policies almost always contain provisions that claims must be made within certain time limits, in a certain form, or in a certain manner. These provisions must be followed carefully and accurately or the insurance company may be released from all responsibility.

In order to know what these conditions are, it is necessary to have the insurance policy and to read it carefully. For this reason, it is important that insurance policies be kept in a safe place where they can be found if a loss occurs. A fire insurance policy should never be kept in the building that is covered in the policy. If the building burns down, the policy will be burned up with it, and will not be available for future use. Likewise, a jewelry insurance policy should not be kept in the jewelry box. If someone steals the box of jewelry, the policy will be lost as well. If possible, insurance policies should be kept in a bank vault to which more than one person has a key. If a person puts a life insurance policy in a bank vault to which he has the only key, it may be very difficult for anyone else to get the policy for quite some time after his death, since the bank vault may be sealed as soon as he dies.

Deaf persons should be advised to keep all letters, notes and memoranda that they have received from their insurance agents with the insurance policy. Any statements that were put in writing by the insurance agent may be very useful when the time comes to make a claim upon the policy. Such notes or writings should never be thrown away.

When a person has a loss of some kind and he notifies his insurance company of the loss, they will generally send him forms to be filled out and signed explaining the facts of the loss. One should use particular care in filling out such forms and should never file a form if he does not fully understand it. Such forms may possibly be designed with the express purpose in mind of encouraging the person to make some mistake that will give the insurance company an excuse to avoid payment of the claim.

There have been instances where insurance companies followed a practice of trying to wear down anyone who files a claim. They may first send out a claim form with instructions to fill it out and return it within 7 days. When this is done, the insurance company may then send out a witnesses form asking for practically the same information over again. When this is completed, they may send out a medical explanation form; and so on, sending out forms one after the other; requesting medical examinations, requesting inspection of the items involved, requesting interviews, etc. This may be done for the purpose of discouraging the person who filed the claim, in the hope that he will finally give up and abandon it.

If the applicant fulfills all requirements, the insurance company may simply refuse to reply to his inquiries for long periods of time, stating that the matter is under consideration. If this does not work, they may finally send him a check for only a small part of the money he is entitle to, marking the check payment in full. Naturally, such tactics are frequently very successful with persons who are unfamiliar with business or insurance matters and are not aware of their legal rights.

In cases of this kind, where a large sum of money is involved and the insurance company seems to be making efforts to avoid payment, it is best to employ an attorney as soon as possible to insure that no error will be made that will allow the insurance company to evade payment. In extreme cases, consideration can also be given to the possibility of making a complaint with the State Department of Insurance.

SECTION 15

Real Estate Transactions

The transfer of real estate is generally a very important matter. It involves not only the person who transfers the property and the person who receives it, but it may involve many other persons. Since real estate exists forever, it is always transferred from one generation to another, and a transfer of real estate not only affects the immediate parties to the transaction but may also affect their heirs or descendants. A transfer of real estate also affects such things as real estate taxes, leases, public easements for roads, sidewalks, telephone lines, and sewer lines, and other matters. For this reason, State laws often prescribe special rules for the execution of deeds, and their recording by some public official.

The question of whether a deaf person is legally competent to make a valid transfer of his real estate by deed was discussed by the Supreme Court of Vermont in the case of *Green's Administrator* v. *Mason*, 84 Vt. 289, 79 Atl. 48. In this case the deaf person executed the deed a few hours before his death. The court said:

> Formerly deaf-mutes were taken to be idiots. 1 Hale's P.C. 34. But the education and better discernment of later times have shown the fallacy of the ancient theory in this regard.

The deed was upheld as valid. The same opinion was arrived at by the Supreme Court of Connecticut in the case of *Brown* v. *Brown*, 3 Conn. 299, in which a deed signed by a man who could not read and who was deaf from birth, signed during the illness preceding his death, was held to be valid. A similar case is that of *Morrison* v. *Morrison*, 68 Va. 190. The courts of New York arrived at the same opinion in the case of *Brower* v. *Fischer*, 4 Johns, Ch. (N.Y.) 441. The Michigan Supreme Court applied the same rule in the case of *Alexier* v. *Matzke*, 151 Mich. 36, 115 N.W. 251.

The general rule is that a deed to real estate must not only be signed by the person transferring the real estate; it must also be acknowledged. Generally speaking, an acknowledgment is a statement to some public official by the persons making the deed that they have signed the document of their own free will for the purposes that are set forth in the document. The public official then adds his official statement to the document attesting the acknowledgment.

In many States, if the person who owns the real estate is married, the spouse will have certain rights in the real estate, which are often called homestead rights, dower rights, or curtesy rights. In such States, the husband or wife having such rights must also sign the deed in order to convey a clear title to the real estate.

The form of acknowledgment that is used in the State of Illinois for these purposes is typical of that used in many states:

> I, (name of notary or other public official), do hereby certify that (name of owner of real estate) and (spouse) whose names are signed to the foregoing instrument, appeared before me this day in person and acknowledge that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.
>
> Given under my hand and official seal this ——— day of ——— 19—.
>
> (signature of public official).

Where a deaf person makes a deed, it is necessary that he acknowledge it before a public official, as shown by the above form. But if the deaf person cannot speak and the public official cannot communicate with him, a problem arises as to exactly how this acknowledgment can be made.

This is not merely a question of technicalities. It is basically important that both the owner and the spouse should understand what they are doing. The owner of the real estate, if he is deaf, may not understand the difference between a deed and a will, and may think that he signing one when he is actually signing the other. (A deed transfers the title at once, and after it has been signed and delivered the person making the deed generally cannot revoke it. The person receiving the deed will usually have full power to sell the real estate at once to other persons. On the other hand, a will does not go into effect until the death of the person who made the will, and he can revoke the will at any time, or he can sell the real estate himself at any time before he dies.)

Where a wife is asked to sign a deed by her husband, she may not realize that she has certain property rights in the real estate which she is signing away. Where a husband and wife are having serious marital difficulties and the husband plans to leave the wife permanently, it is not uncommon for him to attempt to get the wife to sign a deed releasing her rights in real estate. In cases of this kind, it may be a great mistake for the wife to do this and she may refuse to do it if she understands what she is being asked to do. The husband may therefore attempt to induce her to sign such a document by concealing the true nature of the instrument.

A notary public or other public official should never take the acknowledgment of deaf persons without actually asking them whether they understand the document and are signing of their own free will for the purposes set forth in the document. If the public official cannot communicate with the persons involved, he should refuse to take their acknowledgment. He should send them to some counselor of the deaf who is also a notary public, and who is able to communicate with them and take their acknowledgment in a proper manner.

If the deaf persons are able to read and write the public officer can take their acknowledgment in writing. This should preferably be done on the bottom or on the back of the legal document in question. A form of written questions and answers that would be suitable in some types of cases, would be as follows:

Q. What is your name?
A. John Smith.
Q. What is your address?
A. 123 Main Street, Central City.
Q. Have you read this entire legal document?
A. Yes, I have.
Q. Do you understand it?
A. Yes, I do.
Q. Do you understand that this is a deed to certain real estate that you say you own, and that you are now transferring it to a man named Bill Jones, and that you are guaranteeing that he will have good title to it, and do you understand that he will be able to put you off of the real estate and move into it himself, and that he will be able to sell this real estate at any time. Do you understand all of the other terms and provisions of this deed as they are set forth here in this document?
A. Yes, I understand all of this.
Q. Are you signing this document of your own free will?
A. Yes, I am.
Q. Has anyone tried to force you to sign this document, or has anyone tried to do anything that is improper connected with this document?
A. No.
Q. Please sign your name.
A. John Smith.

A series of questions and answers of this kind, in the actual handwriting of the persons involved, if put on the back or the bottom of the legal document and filed with the instrument in the official records of the proper public official, will go a long way toward establishing that the acknowledgment of the deaf person was properly taken in spite of the fact that the public official could not speak to the deaf person in the normal and customary manner.

Of course, the specific questions and answers to be used will depend upon the exact nature of the document, the status of the person who is signing it, and the laws that are in force in that state at that time.

In the Federal case of *Norton* v. *Meader*, 18 F. Cas. No. 10,351, 4 Sawy. 603, the Federal court commented upon this problem of acknowledgment of deeds by a deaf person, and mentioned that it should be possible to make the acknowledgment either in writing or by the use of the language of signs.

SECTION 16

Gifts by a Deaf Person

The case of *Barnett* v. *Barnett,* 54 N.C. 221, involved a woman who had been deaf from birth and who could not read or write. She could communicate by signs only with a few persons who knew her well. She was able to manage all of her household affairs without difficulty.

While seriously ill, she asked her family doctor to prepare a deed of gift which would give her property to a certain person. The doctor prepared the document and she made her mark upon it. It was later contended that the gift was invalid because she did not have capacity to give her property away in that manner.

The Supreme Court of the State of North Carolina said:

> In the earlier history of the law, a person who was born deaf and dumb, was considered to be an idiot. That period has long passed, and the question as to their legal ability to make a contract is placed on its proper ground—their mental capacity. Modern inventions have restored these unfortunates to their proper stations in society. The domestic relation with all its endearments is open to them, and we find them occupying distinguished stations in almost every department of the arts and sciences. To the Abbe Sicard is justly due the distinguished honor of leading in the humane effort to enlighten and instruct this unfortunate class of human beings—and under his direction, their instruction assumed a systematic course. Buildings were erected, which have in time spread over Europe, and our own country is dotted with them. If we cast our eyes over the street, we see a noble structure erected at the public expense for this benevolent purpose. Able teachers employed, and among them those to whom nature has denied the usual inlets to knowledge. There, may be seen the deaf-mute instructing his brother mute—throwing the light of science across his path, and leading him to the knowledge of the common Father of us all. The Bible is no longer a sealed book to the poor mute. Such are the blessings which have been conferred upon this class of beings in modern times—and it is now an established principle, that the deaf-mute's capacity is not to be measured by what he has not, but what he has. Some controversy took place at the bar, as to the onus of proving capacity. It is not necessary for us in this case to decide the question; we are satisfied by the testimony of the witnesses of the entire capacity of Susanah Barnett to understand what she was doing. Dr. Jordan, who drew the paper and witnessed it, states "that the grade of understanding in both (alluding to her brother Benjamin, who was also a deaf mute) appeared to be good, particulary in Susan. They were as intelligent as individuals could be, with their means of information." (At p. 222.)

It was therefore held that the gift was valid and it could not be set aside.

Where a formal document, such as a deed of gift, is executed as proof that the gift has been made, it is not too likely that a dispute will arise. Most of the litigation in connection with alleged gifts by deaf persons arises where property was given by the deaf person to another person without any written documents, and the parties later dispute what was said. The person receiving the property may claim that the deaf person told him that he was making an outright gift, while the deaf person claims that what he said was misunderstood and that he merely said that he was lending the property in question and that he would take it back at some later time.

For example, in one lower court case a deaf man gave $500 to his sister in the presence of witnesses. He had lived with her for many years, but had paid for his room and board. He later demanded the return of the money claiming that it was a loan. The sister claimed that he had made her an absolute gift of the money and refused to return it. The witnesses testified that they had not been able to understand what was said between the deaf man and his sister at the time that he gave her the money because the sister was the only person who was able to understand him. Since it was impossible to determine what had actually been said when the money was transferred, the court found it extremely difficult to decide who should get the money. The case was finally settled on the basis of a compromise.

To avoid such problems, the deaf should be advised not to transfer their property without obtaining proper documents showing the true nature of the transaction. Persons receiving property from the deaf should likewise obtain proper papers to protect themselves against a possible later lawsuit based on the ground that there was a misunderstanding.

SECTION 17

Wills

Capacity to Make A Will

The early law held that a deaf person who was unable to speak was absolutely incapable of making a valid will (see Page on wills, sec. 12.44, Bowe-Parker, 4th ed., 1960; Redfield on Wills, p. 49, 4th ed., 1864).

At the present time it is the established rule that deafness alone does not prevent a person from making a valid will. There are many cases on record in which wills made by a deaf person were attacked. In these cases, the wills were challenged for one or more of the following reasons:

—It was alleged that the deaf person did not have sufficient mental capacity to make a will.

—It was alleged that he did not understand the document that he signed.

—It was alleged that the use of interpreters, etc., did not properly comply with the formal legal requirements for the proper execution of a will.

In all of the following cases these contentions were not accepted and the wills in question were declared to be valid.

Georgia:

Potts v. *House,* 6 Ga. 324 to 364 (a deaf man 90 years of age and ill, capable of making a will).

Illinois:

Tidholm v. *Tidholm,* 391 Ill. 19, 62 N.E. 2d 473 (age of 86 years, deafness, and illness were immaterial).

Challiner v. *Smith,* 396 Ill. 106 71 N.E. 2d 324 (age of 73 years, deafness and illness were immaterial).

Minnesota:

In re Ecklund's Estate, 186 Minn., 129, 242 N.W. 467 (age of 78 years, deafness, illness, and poor knowledge of English were all immaterial).

Missouri:

Sehr v. *Lindeman,* 153 Mo. 276, 54 S.W. 537 (advanced age, deafness, blindness, sickness, and childishness were all immaterial).

New York:

Theological Seminary v. *Calhoun,* 25 N.Y. 422 (age of 85 years and deafness were immaterial).

Lane v. *Lane,* 95 N.Y. 494 (paralysis of vocal cords was immaterial where intent was clearly shown by signs and acts).

In re Pergo's Will, 65 Hun (N.Y.) 478, 20 N.Y. Supp. 394 (a man deaf from childhood and poorly educated could make a valid will).

Matter of Williams, 40 N.Y. St. Rep. 356, 15 N.Y. Supp. 828. *See also* 46 N.Y. St. Rep. 791, 19 N.Y. Supp. 778 (a woman 82 years old, deaf, and in poor health could make a valid will).

Pennsylvania:

Napfle's Estate, 134 Pa. 492, 19 Atl. 659 (age of 84 years and poor hearing, eyesight and health were all immaterial).

The State of Georgia has enacted a statute on this subject:

Wills, capacity §113-207—Permits a person deaf, dumb, and blind to make a will, provided that both the interpreter and the scrivener are attesting witnesses thereto, and are examined upon the petition for probate of the same. In such cases, strict scrutiny into the transaction should precede the admission of the paper to record.

It should be noted that in some of the preceding cases the courts tended to require somewhat more proof that the deaf person who made the will understood it and signed it of his own free will than the court would have required of a person with normal hearing.

There are at least three cases on record in which wills made by deaf persons were declared to be invalid because of the physical handicap of the deaf person. In the case of *Payton* v. *Shipley*, 80 Okla. 145, 195 P. 125, the deaf person had never attended school. He had only very crude methods of indicating his ideas. It had been held in an earlier case that this particular man was incapable of making a deed. The Oklahoma Supreme Court held that under the circumstances he lacked capacity to make a will, and therefore the document that he had executed was declared to be invalid.

A somewhat similar case is that of *Rollwagen* v. *Rollwagen*, 63 N.Y. 504, in which the New York Supreme Court held invalid a will made by an illiterate, partly paralyzed man whose speech was so defective that only one person claimed to be able to understand him, and where the circumstances surrounding the execution of the will were very suspicious.

In the case of Re. Ferris' Will, 115 N.J. Eq. 115, 169 A. 697, affirmed 117 N.J. Eq. 20, 174 A. 708, a lawyer wrote a will for an elderly deaf woman and asked her in written questions if she agreed to the will and if she wished the witnesses to attest it. She nodded her head affirmatively and the witnesses then signed the will. However, the written questions had been shown only to the woman and not to the witnesses. The New Jersey courts held that the will was invalid because the witnesses did not fully understand what the woman was agreeing to. The written questions should have been shown to the witnesses.

The general principles that are followed in these cases are that a deaf person is usually capable of making a valid will. However, the courts may require more proof than usual to show that he understood what he was doing and that he executed the will of his own free choice. In extreme cases, where it appears that the person could not have understood the concept of what constitutes a will, it is possible that the courts may hold the document to be invalid.

Proper Method of Executing the Will of a Deaf Person

When a deaf person is uneducated, special precautions should be taken in the execution of his will. It is necessary to show that the deaf person signed the document, that he understood it and that he executed the document of his own free will. The written evidence proving these things should be part of the execution of the will itself, and should be placed on the bottom of the will. Where an interpreter is used for this purpose, the interpreter should be sworn, and the fact that he has been sworn should also appear in the document.

The forms necessary to prove all of these matters may be quite complicated. The following form should be suitable in many cases.

(body of the will)

IN WITNESS WHEREOF I have hereunto set my hand and seal this ——— day of ——— 19—.

X
——————— [SEAL]
(John Smith—Testator)
HIS MARK

Certificate of Witnesses

We, the undersigned persons, personally know John Smith, and we have known him for many years. We know him to be completely deaf and unable to speak in a normal manner. We know that he is of sound mind, sound memory, and sound understanding, and we believe that he has testimentary capacity. We were called together with John Smith in the living room of his home at ——— Street, in the city of ———, at ——— o'clock on the date shown above. In our presence and in the presence of John Smith (all of us being together at the same time and place) we saw Mr. Bill Jones act as interpreter, under oath. He translated to John Smith the contents of this document using the language of signs. All of us are fully able to understand the language and all of us read this document and all of us saw that this document was fully and properly explained to John Smith. And John Smith acknowledged to Mr. Bill Jones and to each of us that he fully understood the document and that he signed it of his own free will and deed, and that no improper action of any kind was used to make him sign this document. And, after the document had been fully and correctly explained to him by Mr. Bill Jones in our presence as aforesaid, Mr. John Smith then

made his mark upon the said document and told us that he intended this mark as his signature, and that the reason he signed in this manner is that he is illiterate and unable to sign his name in the usual manner, and he told us that he intended such mark to be his valid execution of the said document. And then, at his request to us (which was made to us in the language of signs) we then and each of us signed this document as witnesses in his presence and in the presence of each other.

1. ______________________________
(Signature of first witness)
2. ______________________________
(Signature of second witness)
3. ______________________________
(Signature of third witness)
4. ______________________________
(Signature of fourth witness)

Certificate of Interpreter

My name is Bill Jones and I am a competent interpreter of the language of signs, and I am able to communicate freely with Mr. John Smith who is totally deaf. I have read the above statement made by the witnesses to the execution of this will and I take oath that the above statement is entirely true. I did explain this document to John Smith fully and accurately and he did make the statements and he did sign this document in the manner described by the witnesses in the statement set forth above; and I was under oath to interpret truly at that time.

____
(Signature of Bill Jones)

Attestation by Notary

Mr. Bill Jones, who is personally known to me, appeared before me on the date first set forth above and took oath that his statement set forth above is true.

______________________________ [NOTARY SEAL]
(Notary public)

Of course no form of this character should ever be used without first adapting it to the facts of the particular situation and the laws of the state that is involved.

There are two other methods that are sometimes used in this situation. One is to have the deaf person appoint an "attorney in fact", who then signs the will for him. It is useless to attempt to handle the matter this way because it merely transfers the problem from the will form to the "power of attorney in fact" form. Nothing is actually solved by doing this, and it merely introduces another step in the procedure, which makes it more complicated.

Another procedure is to have the deaf person "touch the pen" while someone else actually signs his name, and to make no mention of the fact that the testator was actually deaf and illiterate. This is worse than useless because ignoring the problem does not solve it. If the problem is merely ignored at the time of execution of the will, it will probably come up later at the time of probate. At that later time it will be much more difficult to handle and the witnesses or interpreter may not be available to explain what actually happened.

It is best to face the problem and handle it correctly at the time of execution. A will is something that may be extremely important to the wife and children of the person who makes it, and the importance of a proper will to the beneficiaries should be kept in mind.

Deaf Person as a Witness to a Will

It was held in the case of Succession of Beattie, 163 La. 831, 112 So. 802, that a deaf person was not a competent witness to the signing of a will by another person. The reason for this was that the law required the person making the will to acknowledge to the witnesses that he intended the document to be his will, and the deaf person was unable to hear this statement.

A deaf person would be a competent witness to a will, however, if the acknowledgment by the person making the will were communicated to the deaf witness in writing, or in some other manner.

The State of Louisiana has enacted a statute which specifically makes deaf persons incompetent to be witnesses to a will (see sec. 1591 of the Civil Code). Such statutes are inadvisable since there is no good reason why a deaf person should not witness a will, provided a proper procedure is followed.

Right To Receive Property as a Beneficiary

The case of *Christmas* v. *Mitchell,* 38 N.C. 535, involved a deaf person who was a beneficiary under the will of another person. The man had been deaf from birth and it was claimed that he was ignorant and uninformed. It was contended that he was a lunatic under the law and therefore should not be entitled to receive his bequest.

The Supreme Court of North Carolina held that although the deaf man was possibly incapable of transacting business, he was still mentally sound and that his handicap could not be used as an excuse to deny him his benefits under the will. This case is a good example of how far some people may go in an effort to take advantage of a deaf person, simply because of his handicap. However, the courts seldom go along with this.

The State of Louisiana has enacted the following statute on this subject:

> *CC 1548*—Provides that if a deaf-and-dumb person knows how to write he may accept donations for himself or by an "attorney in fact." If

he cannot write, the acceptance shall be made by a curator appointed by the judge for that purpose.

Dead Bodies for Research

The law that applies to dead bodies, generally termed "the law of cadavers" by attorneys, is becoming increasingly more important among the deaf due to the activities of the Deafness Research Foundation of New York City. This foundation supports the operation of the Temporal Bone Banks Program. It maintains a trained staff to direct the acquisition of the temporal bones of human bodies at the time of death. These bones are vitally needed for medical research into the causes of certain types of deafness.

A number of legal problems may arise in this field.

It has occasionally happened that a person would make a will in which he put a statement leaving certain parts of his body to such an organization for research or medical purposes. Upon his death, his widow may be opposed to having this done, possibly for religious reasons. Children or other surviving relatives may also disagree as to whether or not this should be permitted. Where the widow has signed a document agreeing to permit parts to be removed she may later change her mind and repudiate this document following the death of her husband. Where parts have been removed without the permission of the surviving relatives, they may later sue for damages because this was done without their consent. Other problems in this field may also arise.

The general law on this subject differs greatly from one State to another. It has been held that the instructions in the will of the dead person should be respected (see *Thompson* v. *Deeds,* 93 Iowa 228, 61 N.W. 842). On the other hand, it has also been held that the surviving spouse has the right to direct what shall be done with the remains; it has been held that in some cases the other surviving relatives may have a right of possession that is greater than that of the surviving spouse; it has been held that the executor or administrator of the estate has power over this matter; and it has also been held that third parties may have contract rights in the body (see "The Law of Cadavers" by P. E. Jackson, Prentice-Hall, 1950, New York).

Since an organ removed from a cadaver is still legally a part of the remains (Matter of Wnuk, 200 App. Div. 731, 193 N.Y. Supp. 353), all of these problems may be involved when the temporal bones are removed from a body.

Since the law on this subject is in considerable confusion, the best method of handling the situation is for the decedent to place a clause in his will directing the temporal bones to be removed and sent to the proper agency; and, in addition, for the surviving spouse or next of kin to sign a release or consent to this action. Such directions in a will, or consents, signed by the spouse or next of kin, are generally revokable at any time by the persons involved, unless they have been put into the form of a contract and some consideration (for example a payment of one dollar) has been given to the person signing such a document.

It would be possible to eliminate much of the confusion in the area by the enactment of a suitable statute which would state exactly who has the power to permit the removal of temporal bones or other parts of the body.

A suitable statute has been enacted in the State of Illinois which provides as follows:

> 1. Every person of testamentary capacity may give by will or other written instrument executed during that person's lifetime, the whole or any part of his body to a charitable, educational, or research institution, university, college, State director of public health, State director of public welfare, legally licensed hospital or any other organization intended and equipped to distribute human bodies or parts thereof, either for use as such institution, organization, university, college, director or hospital may see fit, or for use as expressly designated in the will or other instrument, and the gift shall become effective immediately upon death.
> 2. If the instrument making the gift does not purport to be a will, it shall be executed by the donor or by some person in his presence and by his direction and attested in the presence of the donor by two or more credible witnesses. The instrument shall become immediately effective upon the donor's death, and no person acting in good faith pursuant to the direction of the instrument and without knowledge of a subsequent revocation thereof shall be liable for so doing, notwithstanding the subsequent revocation in whole or part by a will, codicil, or other instrument executed in accordance with this section.
>
> (Ch. 3, Illinois Revised Statutes, sec. 42a.)

SECTION 18

Proper Method of Executing Documents Involving the Deaf

There are frequently occasions when a literate deaf person enters into a written contract and it is important to make sure that he will be firmly bound by the contract. For example, where a deaf person enters into a property settlement agreement in connection with a divorce case, or where there is a trust agreement in favor of the wife or children, it may be vitally important to make sure that he will not be able to avoid the contract later by claiming that there was some misunderstanding, or that force or duress was used to make him sign the contract. Even if there is no danger that the deaf person himself may try to avoid the contract, a problem may still arise because, if he should die, the administrator or executor of his estate may try to avoid the contract on behalf of the estate.

To help avoid the delay, expense and difficulties of litigation, it is often advisable to take special precautions in the execution of important contracts. There are a number of things that can be done.

First, assuming that the contract has been reduced to writing and signed by both parties, the deaf person should be instructed to write on the bottom of the document the following statement in his own handwriting:

> I have read this contract completely. I understand it, and I have signed it of my own free will.

Second, the signing can be done before witnesses and the following statement can be typed on the bottom of the contract and then signed by the witnesses.

> Mr. John Smith read this contract in our presence, and signed it in our presence, and told us that he signed it of his own free will.

____
(First witness)

____
(Second witness)

Third, the signing of the contract can be performed before a Notary Public, under oath. The certificate of the notary should be put on the bottom of the contract and may read as follows:

Attest:

Mr. John Smith signed this document in my presence and took oath that he has read it, understands it, and signs of his own free will.

______________________________ [NOTARY SEAL]

(Notary public)

Fourth, the deaf person may put on the bottom of the contract, in his own handwriting, a statement that he has obtained independent legal counsel before entering into the contract. Such a statement might read as follows:

I hereby certify that I secured independent legal counsel from my own lawyer, Mr. Bill Jones, before signing this document.

____

(John Smith)

Each of these four procedures could be used alone, in any combination, or all of them could be used together. Each of them will add to the security of the contract. For a form that can be used where the deaf person is illiterate and an interpreter must be used, see the chapter on wills. For a form that can be used in connection with acknowledgments, see the chapter on real estate matters.

None of these forms should ever be used blindly. They should always be properly adapted to the particular facts, persons, and laws of the situation that is involved.

Some lawyers follow the additional practice of always making some minor mistake in the body of the document, and then having the person who signs the contract correct that mistake in his own handwriting. The presence of such a correction in the body of the document tends to prove that the person read the document carefully and wanted the document to be accurate.

SECTION 19

Marriage and Divorce by Deaf Persons

No question has ever been raised as to the capacity of deaf persons to marry if they are otherwise competent to do so. They sometimes experience some difficulty, however, in obtaining necessary information about marriage licenses, medical examinations, etc. Where deaf persons have married without fully complying with all of the requirements of the law, this does not affect the validity of the marriage. There is a strong public policy in protecting the marriage relationship, and the courts generally overlook technicalities in order to protect the parties to the marriage and their children.

A deaf person sometimes claims that he did not understand the marriage oaths that were spoken by the civil or church officer at the time of the marriage ceremony. Although this may be true, it does not affect the marriage relationship where the parties lived together following the ceremony. Cohabitation of the parties following a ceremony is said to be a ratification of the marriage, which overcomes the effects of any technical omissions. However, if a deaf woman were tricked into a marriage ceremony on some pretext, without understanding what was being done, and she later refused to cohabit with the man in question, she would be entitled to bring a suit to have the alleged marriage annulled on the ground of fraud.

It does happen, of course, that a deaf man and woman will live together as if they were man and wife, without being formally married. In some States this creates a so-called common law marriage which the courts will recognize for some purposes. However, the relationship may not be recognized in other States.

In speaking of such a relationship, semi-literate deaf persons might use signs which if literally translated would say:

> They man and wife.

By these signs they mean to say:

> They are living as if they were man and wife.

Since the forms of the verb "to be" are commonly omitted from the language of signs by undereducated deaf persons, the phrase "as if they were" is often dropped. This can make the literal translation not what is actually intended. This peculiarity of the language of signs should be guarded against as it may cause considerable confusion if it is not properly understood.

Divorce cases involving the deaf are similar to those involving persons of normal hearing, except that they can be more bitter and disagreeable. The reason for this is that the line of communication between deaf persons is much more easily broken. When one person speaks, and the spouse has normal hearing, the spouse will hear what is said even though he or she may not want to hear it. However, with the deaf, one cannot be forced to watch someone else's signs unless he wants to. By merely looking away, a deaf person can refuse to communicate with the other person. The result is that when neither person will pay any attention to what the other says, there is no communication whatever between them.

This is a situation in which marriage counseling could be very helpful, but there are very few properly qualified persons available for this work.

When a divorce is being secured and the parties have valuable property, it is customary for both parties to enter into a property settlement agreement in order to adjust their property rights in the event of the divorce. They may also enter into some kind of an agreement covering such things as child custody rights, visitation rights, and alimony payments. Such agreements are often incorporated into court decrees and are enforcible by court orders.

Where one of the parties to such an agreement is deaf, and it appears that fraud or trickery may have been used to secure his signature to such an agreement, the courts will refuse to enforce it. Where one of the parties is under a handicap, such as deafness, the courts are likely to declare such an agreement to be void unless it can be clearly shown that it is fair to both parties, they both understood it, and they both had the benefit of independent legal advice.

Great care should be used in executing such agreements. It is highly desirable for the attorneys for the parties to sign the document as well as having the parties sign. The following form to be used by the attorney for a deaf person will frequently be suitable.

Statement by Attorney

My name is John Smith and I am the attorney of record for Mary Jones in the divorce case of *Mary Jones* vs. *Bill Jones* now pending in the District Court of Smith County, State of Franklin. I have read the foregoing "Property Settlement Agreement" and I have carefully explained it to my client Mary Jones, who is totally deaf, and I have taken particular care to make sure that she fully understands it and agrees to it. I further certify that in my professional opinion this agreement is fair to her, and that there is no reason why she should not be bound by it. I approve of her signing it.

(Signed—John Smith)
(Attorney of Record for Mary Jones)

It should be kept in mind that such agreements not only affect the husband and wife who entered into the contract, but they may also affect the children of the parties. It is important to take great pains to see that such agreements are made as clear and binding as possible.

When a deaf couple are divorced and there are children involved, the husband is generally required to make alimony or child support payments to the wife. These payments are usually based upon the amount that the husband makes at that time. It sometimes happens that the husband later loses his job and it may take him a long time to find new employment. The husband might assume that he is not liable for the alimony or child support payments during the time that he is out of work. This is usually incorrect. When a court order has been made, ordering the husband to pay the wife a certain sum of money each week, the order remains in effect until it is changed by the court. The court order is not changed by the circumstances alone. It may be true that the court would be very willing to reduce the amount of the payments while the husband is unemployed, but the court will not do it until the matter is brought to its attention. If the matter is not brought up in court, the order will remain in effect, and it is frequently held that once amounts have accrued under such a court order, the judge has no power to reduce them. The judge can reduce future payments, but not past payments that have already accrued.

There have been cases where a wife would falsely tell her former husband that he did not have to worry about the payments while he was unemployed. Then, long afterwards, when a very large amount of unpaid money had accrued, the wife would bring a proceeding to have the husband held in contempt of court and imprisoned for failing to make the payments. The deaf seem to be very susceptible to making this particular error and should be cautioned against it. If the circumstances of the parties change, an appropriate change should be secured in the court order immediately.

It may also happen that a deaf person who is served with a summons in a divorce case will refuse to go to court at the proper time. As a result the case is lost by default and a court order may be entered against the person who did not appear with bad results for him. A summons in a divorce case (or any type of law suit) is a very serious matter and should always be given careful attention. It should never be ignored, and legal assistance should always be secured.

Marriage of Deaf Persons by a Special Officer

A statute was enacted in the State of Illinois in the year 1874 (2 Ill. Rev. Stat. p. 699) providing that any superintendent of any public institution "for the education of the deaf and dumb in this State" shall have the power to perform marriages. The purpose of this law was to make it unnecessary for deaf persons to enter into a marriage through the use of an interpreter. Since the superintendent of the school for the deaf was presumed to know the language of signs, he would be capable of performing the marriage ceremony in that language and an interpreter would be unnecessary.

Alienation of Affections

When marriage difficulties exist it is frequently found that the husband is involved with another woman, or that the wife is involved with another man. In such cases it is often hard to say whether the improper relationship arose because of the marriage difficulties or whether it was the cause of the marriage difficulties. Very frequently, the existence of such relationships is merely one of the symptoms of a sick marriage, and it is not by any means the only cause of the marriage troubles.

However, persons often take a very one-sided viewpoint in such situations. A man whose wife has left him and become involved with another man often says: "He stole my wife." He tends to overlook the possibility that it was his own conduct which made the wife leave him and seek other protection. He also overlooks the possibility that it was his wife who may have seduced the other man, rather than the other man who seduced his wife.

A deaf man may find it hard to understand that if he can sue the other man for taking away his wife, then logically the other man's wife may be able to sue his wife for taking away her husband. Such cases depend a great deal upon the viewpoint of the parties.

There are occasionally cases in which a suit for alienation of affections may be justified, but most of these cases require marriage counseling rather than legal counseling. This can be true of cases involving the deaf.

SECTION 20

Child Custody and Adoption

Custody of Children of Deaf Parents

It has been held that deafness may prevent a woman from obtaining the custody of her children, and that they may be better off in a public institution than living with their mother. This unusual decision was reached in the case of *Howard* v. *Ragsdale,* 249 S.W. 2d 154.

In this case, a husband and wife had three children, aged 5, 8, and 9. When the parents separated, the children were placed in a public institution. The deaf mother later brought a legal proceeding to secure their release from the institution and to obtain custody. The Kentucky court stated that the children had lived in the institution for 5 years, that they were doing well there and that the mother was a deaf-mute who lived with other deaf-mutes. The court held that it would not return these children to their mother because they would be placed in a completely different and strange environment and would have great difficulty in living and communicating with deaf-mutes. The children were therefore left in the public institution.

Cases of this kind represent a great tragedy for the deaf parents involved. Decisions like this can be reduced if such cases are prepared very carefully before they are presented to the courts. A great effort must be made to educate the court as to the capabilities of deaf parents generally. This can be done through the testimony of expert witnesses who are familiar with the education and upbringing of children by deaf parents. Experts on this subject can be located through the organizations for the deaf, such as: Gallaudet College in Washington, D.C. (some members of the faculty of this college are themselves children of deaf parents), the American Hearing Society, the National Association of the Deaf, the Association of American Instructors of the Deaf, the U.S. Department of Health, Education, and Welfare, and a great many other institutions, organizations, and schools for the deaf.

When a deaf woman becomes pregnant with an illegitimate child she frequently goes to some public or private welfare agency for help. Her case may be assigned to a caseworker who has no particular knowledge or experience with the deaf, and who may honestly believe that a deaf woman is necessarily incapable of caring for her child. Such a person may attempt to persuade the deaf woman that she should give the child up for adoption instead of keeping it.

The deaf woman may be isolated in some institution where no one knows the language of signs and no one is able to communicate with her with any degree of fluency. She may not be permitted to see any of her friends. She may be ill and in a weakened condition. In this situation it may be easy for someone to induce her to sign away all of her rights to her child. There have been tragic cases of this kind. Later, when the deaf woman is released from the institution and she is able to get the advice of her friends or relatives, she may realize that she made a great mistake in signing away her rights to her child, and she may wish to bring legal action to recover custody.

When such a case is litigated in court, the judge who hears the case may likewise have no particular knowledge of or experience with the deaf, and his ignorance may make him biased or prejudiced. He may not understand how a deaf woman can properly care for an infant. He is likely to ask, "How can she hear the baby cry?" "How will the baby learn to speak if the mother does not speak?"

In handling such court cases, there are usually three points to be established:

1. That undue influence or fraud was used upon the deaf mother, which caused her to sign away her rights to her child.
2. That the mother is capable of properly caring for her child, and is willing, and physically and financially able to do so.
3. That it is in the best interests of the child that it should be cared for by its own mother, rather than by the prospective adoptive parents.

In showing the presence of undue influence or fraud, the following factors are important: That the deaf woman was not given full and accurate information concerning the adoption through a system of communication that she could readily understand; that she did not understand the legal meaning and significance of what was done; that she did not understand the oath that was administered to her during the signing of the papers; that she was not allowed to secure independent advice from her friends, relatives, or her own personal attorney; that she was physically unwell at the time involved; that she was entirely dependent upon the managers of the institution for her basic necessities; that untrue statements were made to her; that vital facts were concealed from her; or that intimidating or threatening statements were made to her.

In such cases the court will sometimes ask: "What possible reason could the caseworker in this institution have had for using undue influence to induce this woman to give up her baby for adoption? What difference could it have made to the caseworker what this woman did?" In answering these questions it should be kept in mind that in some places there is a custom for persons adopting a child through a private institution to make a voluntary contribution to the agency that secures them the child. Such contributions may be an important source of income to the institution. There may, therefore, be a strong tendency to encourage such adoptions, rather than to leave the child with its true mother.

It should also be kept in mind that some caseworkers or social workers may be totally ignorant of the deaf, and may have very peculiar ideas concerning them. It is not unusual to find certain social workers who believe that a child brought up by a deaf mother will never learn to speak; or that the child will live under unnecessary handicaps. Such ideas may create a deep prejudice against the deaf parent. If this situation exists, it should be fully exposed during the course of the litigation.

The following line of questioning has proved useful in cases like this:

> Attorney (for the deaf mother)—"Did you feel that this deaf woman was not a desirable parent to bring up her child?"
>
> Caseworker (who induced the deaf mother to sign adoption papers)—"That's correct. I did not feel that she was suitable."
>
> Question—"Is she a typical deaf person?"
>
> Answer—"I suppose she is typical of deaf-mutes."
>
> Question—"So far as you know, she is no better and no worse than any other deaf person?"
>
> Answer—"I don't know anything in particular about her. I suppose she is about the same as others of her type."
>
> Question—"You know, of course, that there are many thousands of such deaf people in this state?"
>
> Answer—"Naturally."
>
> Question—"You know, of course, that thousands of deaf people have children of their own?"
>
> Answer—"Of course."
>
> Question—"Have you taken action against these thousands of other deaf persons to take all of their children away from them?"
>
> Answer—"No, of course, I haven't."
>
> Question—"Do you feel that all of these deaf persons should have their children taken away from them?"
>
> Answer—"No, of course, I don't say that."
>
> Question—"Then, if this woman is the same as all other deaf persons, and if you feel that the other deaf persons have a right to bring

> **up their own children, why did you feel that this particular deaf woman should not bring up her own child?"**

In regard to proving that the deaf mother is capable of bringing up her own child and that it is in the best interests of the child that it should be raised by its own mother, this can be established in a number of different ways. First, it should be shown to the court that the mother will have sufficient personal income or help from relatives, friends, or others to provide a reasonable standard of living. Second, it may be very important to have experts in the field of the deaf testify as to the ability of deaf persons generally, and of the individual in particular, to raise children. Such an expert can answer any questions that the court may ask about this subject. Third, it can be pointed out to the court that many famous people have had deaf parents.

It may also be very helpful to have a number of deaf mothers come to court and testify on the witness stand that they have brought up their own children without any unusual difficulty. There are certain technical rules of evidence that may prevent such testimony from being admitted, but if the case is being heard by the court without a jury, the court may be willing to hear such witnesses. After hearing a few deaf mothers testify, the court will probably soon realize that there is no good reason to take a child away from a mother merely because she is deaf.

The case of Clarence Hathaway in Ohio has received a great deal of national publicity during the past few years. In this case a normal child was born to Mr. and Mrs. Harold Hathaway of Stow, Ohio, both of whom were almost totally blind and deaf and who were supported by public welfare funds. A legal proceeding was brought to take custody of the child away from them on the basis of their physical handicaps. However, the trial court ruled that they were entitled to keep custody of their own child; and later events fully proved this to be a wise decision. The child was raised without any serious difficulty and is turning out to be a very fine youngster, with a superior degree of social maturity. (Detailed articles appeared in the Chicago Sun Times of June 12, 1955, Apr. 3, 1960, and in many other publications.)

Adoption by Deaf Persons

Most State statutes governing the adoption of children require that the persons who wish to adopt a child must be fit and proper persons or contain other phraseology that is equally broad or vague. In determining whether or not a person is fit and proper, the courts are entitled to consider every factor of the problem, including the deafness or other physical handicap of the person who wishes to make the adoption.

There does not appear to be any appellate case on record in which deafness was ever held to disqualify such a person from making an adoption as a matter of law.

However, it must be admitted that deafness will often be considered an adverse factor when a deaf person seeks to make an adoption.

In many States, applications for adoption must first be approved by some social welfare agency. Such agencies are often overloaded with applications and may sometimes tend to reject applications on a rather arbitrary basis. A deaf person who wishes to adopt a child and who is a suitable person for this purpose may find that his application is not being given serious consideration by any of the child custody agencies in his locality. In this situation, the applicant may wish to consider moving to some other locality where the chances of making an adoption are more favorable. He may also consider adopting a child from a foreign country. There are international agencies operated for this purpose. It is also frequently easier to adopt an older child or one who has some physical handicap.

In some States, where direct adoptions are permitted, the deaf person may be able to make an adoption directly through the other persons involved, or by contacting a local judge, doctor, or lawyer. Naturally, the proper legal steps must be fully complied with and every precaution taken to insure a valid and legal adoption.

In counseling persons who wish to make an adoption, it is important to explain fully the legal implications of doing this. An adopted child must usually be supported by its adopted parents until it is of legal age. This includes proper education, including college education if that is suitable. The adopted child will often have a legal claim on the estate of the adopting parents. In some cases the parents may be liable for damage done to others by the child if they do not properly supervise the child's activities. The adopting parents may be subject to criminal penalties if the child later becomes delinquent and they contributed to such delinquency.

Naturally, if a married couple is making the application, it is not sufficient that only one of them wishes to adopt a child. It is vitally important that both of them have a deep desire to raise a child, and that both of them fully understand what this involves.

The field of adoption involves both legal and social problems and the person who undertakes to counsel the deaf on this subject should try to see that both of these fields are given proper consideration.

SECTION 21

Automobile Accidents Involving Deaf Pedestrians

A considerable number of cases involving deaf pedestrians who were struck by automobiles or other vehicles have been litigated in various State supreme courts. These generally involve deaf persons who failed to hear the automobile horn and were struck from behind.

The case of *Crawley* v. *Jermain*, 218 Ill. App. 51, involved a woman who could not hear or see very well. She was walking along the sidewalk and crossed a driveway. The defendant was backing his car out of that driveway and honked his horn to warn pedestrians. The woman did not hear the horn and was struck and injured. The driver contended that he was not responsible for her injuries because he had honked his horn, and he had no way of knowing that the woman was deaf.

The Appellate Court of Illinois said:

> * * * The fact that he did not know that plaintiff was somewhat deaf and her sight impaired does not militate in his favor nor in any way minimize his responsibility for the accident and liability to respond in damages therefor. It is beside the question that he was honking the horn of his car, because, aside from giving such a warning, it was incumbent upon him to proceed across the sidewalk cautiously so as to avoid running over pedestrians rightfully proceeding upon the same.
>
> It is idle, in the circumstances of the case, to contend that plaintiff was not in the exercise of due care for her own safety; she had a perfect right to assume that the sidewalk was safe for her to walk upon and that it was as safe for a deaf and nearsighted person as it was for those whose faculties of sight and hearing were normal.
>
> (At p. 53.)

The judgment for the deaf woman was upheld.

In the case of *Furtado* v. *Bird*, 26 Cal. App. 152, 146 P. 58, a deaf man was riding a horse along a road. A man driving his car down the road honked his horn when he was about 200 or 300 feet away from the deaf man, who did not hear the horn. There was a collision and the driver claimed that the deaf man was partly responsible because he failed to look up and down the road in both directions.

The California Appellate Court said:

> Appellant (automobile driver) contends that plaintiff (deaf man) with guilty of contributing to his injury because, being hard of hearing, it was his duty to look back as well as forward, and that, if he had been doing so, this accident would not have occurred. We do not think it was plaintiff's duty to be constantly looking back. Both parties had an equal right to the use of the road, but defendant was in a better position to avoid a collision, and, when he observed that plaintiff appeared not to hear the horn, it was defendant's duty to slow down, and even to stop his car if necessary to avoid running against plaintiff's horse.
> (At p. 60.)

The judgment in favor of the deaf man was upheld.

In a number of cases in which verdicts in favor of deaf pedestrians were issued, the courts pointed out that a deaf pedestrian is required to use that degree of care which is prudent and proper in view of his disability. In the case of *Furtado* v. *Bird,* 26 Cal. App. 152, 146 P. 58, the court said:

> * * * he was, however, bound to use even greater care than a person of good hearing, in order to exercise that care which is required of a person having unimpaired faculties. Still, he would not be bound to hear what would have been heard by anyone possessing normal faculties.
> (At p. 61.)

In the case of *Wilson* v. *Freeman,* 271 Mass. 438, 171 N.E. 469, the court held in favor of a deaf pedestrian who was struck from behind by a truck; and in discussing the degree of care required by the deaf man said:

> The deafness of the plaintiff did not deprive him of the rights of a traveler. That infirmity required increased and commensurate circumspection on his part in order to attain the standard of conduct established by the law for everybody.
> (At p. 470.)

Likewise, in the case of *Robb* v. *Quaker City Cab Co.,* 283 Pa. St. 454, 129 Atl. 331, in which the court held in favor of a deaf man who was hit by a cab while crossing the street, the court said:

> Plaintiff was a deaf-mute requiring more care on his part but did not of itself convict him of negligence in attempting to cross the street. A citizen's right upon the public highway does not depend upon his ability to hear, so long as he makes proper use of his sight.
> (At p. 332.)

Other cases decided in favor the deaf pedestrian in one or more respects are as follows:

Tomey v. *Dyson,* 76 Cal. App. 2d 212, 172 P. 2d 739 (partially deaf pedestrian crossing in middle of street).

Jones v. *Bayley,* 49 Cal. App. 647, 122 P. 2d 293 (partially deaf and nearsighted pedestrian; dispute as to whether crossing was in the middle of the street).

Short Way Lines, Inc. v. *Sutton's Administrator,* 291 Ky. 541, 164 S.W.

2d 809 (deaf man standing in the middle of the road, struck by bus).

Covert v. *Randall*, 298 Mich. 38, 298 N.W. 396 (totally deaf pedestrian crossing at crosswalk).

Jakubiec v. *Hasty*, 337 Mich. 205, 59 N.W. 2d 385 (totally deaf pedestrian crossing from curb to streetcar safety zone).

Fink v. *New York*, 206 Misc. 79, 132 N.Y.S. 2d 172 (totally deaf pedestrian crossing with green light struck by firetruck and killed. Judgment for $47,000 affirmed).

A number of cases adjudicated in State supreme courts have also been decided against the deaf pedestrian involved.

In the case of *Kerr* v. *Connecticut Co.*, 107 Conn. 304, 140 Atl. 751, the person involved was 58 years old and had very poor hearing. He was walking down a street that had no sidewalks and he walked very close to the trolley tracks in the street and was struck from behind. The Connecticut Supreme Court held that he could not recover because he had not exercised proper care for his own safety. He knew he was deaf, and that he would not be able to hear a trolley bell, and therefore he should not have walked near the tracks.

Likewise, in the case of *Hizam* v. *Blackman*, 103 Conn 547, 131 Atl. 415, a deaf man crossing the street at night was struck by an automobile which he had not seen or heard. The court held that he could easily have seen the car if he had looked, and since he had failed to do so, he could not recover.

Similar cases are:

Finneman v. *Holden*, 75 Md. 1, 22 Atl. 1049 (partially deaf man, 75 years old, crossed street without looking).

Paytes v. *Davis*, 156 Va. 229, 157 S.E. 557 (partially deaf man crossed highway without looking).

Hanson v. *Matas*, 212 Wisc. 275, 249 N.W. 505 (deaf man, walking in the middle of a narrow road, struck from behind by a truck).

McMillan v. *Keck*, 82 Colo. 434, 260 P. 1079 (partially deaf man struck on the sidewalk by a car backing out of a garage).

Settle v. *Haynes*, 312 Ky. 285, 227 S.W. 2d 193 (deaf man, crossing at crosswalk, darted in front of an approaching car).

Kemp v. *Larmer*, 870 Ohio App. 307, 94 N.E. 2d 702 (partially deaf man struck by a car backing out of a driveway. The rear window of the car was covered with moisture).

Goodrich v. *Cleveland*, 15 Ohio App. 15 (totally deaf pedestrian, crossing at corner, struck and killed by fire truck going wrong way on a one-way street).

Mackie v. *McGraw*, 183 Ore. 204, 191 P. 2d 403 (pedestrian had hearing aid but failed to use it. Struck when crossing road).

Adams v. *Armour & Co.*, 142 Pa. Sup. 280, 16 Atl. 2d, 142 (deaf pedestrian crossing near intersection).

Lewis v. *Wood*, 247 Pa. 545, 93 Atl. 605 (deaf person alighting from streetcar and walking to curb).

McCann v. *Sadowski*, 287 Pa. 294, 135 Atl. 207 (deaf flagman on street hit by automobile which did not stop).

Hamilton v. *Moyers*, 24 Tenn. App. 86, 140 S.W. 2d 799 (totally deaf pedestrian walking along right-hand side of road was struck in back by a truck).

Rhimer v. *Davis*, 126 Wash. 470, 217 P. 193 (totally deaf pedestrian crossing in middle of a bridge).

McCullough v. *Lalumiere*, 156 Me. 479, 166 A. 2d 702 (totally deaf pedestrian crossing outside of crosswalk, struck by police car).

Harney v. *Giering*, 231 Wash. 555, 231 P. 958 (partially deaf pedestrian walking to corner, struck by car backing up to park at curb).

The general principles are well summarized in Prosser on Torts, 126, 2d Ed., 1955, which states:

> The man who is * * * deaf * * * is entitled to live in the world, and cannot be required to do the impossible by conforming to any physical standards * * * . At the same time, his conduct must be reasonable in the light of his knowledge of his infirmity.

Where a deaf pedestrian is struck by an emergency vehicle such as an ambulance, police car, or fire truck, it is generally held to be a question for the jury as to whether the deaf person was exercising proper care for his own safety in view of his handicap. See *McCullough* v. *Lalumiere*, 156 Me. 479, 166 A. 2d 702 (police car); *Goodrich* v. *Cleveland*, 15 Ohio App. 15 (fire truck); *Fink* v. *New York*, 206 Misc. 79, 132 N.Y.S. 2d 172 (fire truck).

SECTION 22

Automobile Accidents Involving Deaf Drivers

The case of *Atkinson* v. *Cardinal Stage Lines Co.*, 148 Kan. 244, 80 P. 2d 1073, involved a deaf driver and his companion in an automobile who was also deaf. A bus approached their car from the rear at a high rate of speed. The bus was out of control due to faulty brakes. The bus driver honked his horn to signal that he would pass the car on the left, and that the car should move over to the right side of the road. The deaf driver did not hear the horn and did not move to the right and there was a collision. The deaf driver did not have a driver's license. The bus company claimed that the accident was the fault of the deaf driver because he did not hear the horn, and that he should not have been driving.

The Supreme Court of Kansas said:

> Defendants next argue that even though plaintiff did not know that the airbrakes on the bus would not work, still the driver of the bus was sounding blasts on his horn and had plaintiff and his companion not been deaf they would have heard the horn and known there was an emergency and pulled to the right. Defendants argue that as a matter of law a person completely deaf is not competent to operate a motor vehicle upon the highways of the State. To sustain this argument defendants point out that plaintiff did not have a license to operate a motor vehicle, and that he was guilty of a misdemeanor for driving a car without one and that the statutes forbid a license being issued to any person who is suffering from such a disability as would prevent him from exercising ordinary control over a car. The statute does not forbid a deaf person being given a license to drive a car. Whether the disability from which plaintiff was suffering would have been sufficient grounds to warrant the vehicle commissioner in denying him a driver's license would be a question of fact.
>
> (At p. 1076.)

The judgment in this case was, accordingly, in favor of the deaf driver.

The case of *Penn* v. *Pearce*, 121 Fla. 3, 163 So. 288, involved a deaf driver who drove across railroad tracks even though a train was approaching, sounding its bell and its whistle. There was a collision which caused the train engine to leave the tracks and overturn. The railroad fireman was killed and his wife sued the deaf driver for the death of her husband.

The Supreme Court of Florida said:

> As heretofore stated, Mr. Baynard was deaf. He was driving an automobile over a street which crossed a railroad upon which he knew that trains were often passing. He was familiar with the surroundings, and, knowing himself to be deaf, there was an increased degree of duty involved upon him to keep a sharp lookout, which he evidently did not do. On the contrary, he approached that track without slackening his speed, although a heavy freight train was approaching the same point, with the whistle sounding and the bell ringing to warn of its approach.
> (At p. 289.)

The court held that the deaf driver was liable for the accident because he knew that he should have looked for a train at that point in the road and he failed to do so. A similar case is *Dardenne* v. *Texas & P. R. Co.*, 13 La. App. 262, 127 So. 458.

In the case of *Roberts* v. *Ring*, 143 Minn. 151, 173 N.W. 437, the deaf driver struck a 7-year-old boy who ran out into the middle of the street. The Supreme Court of Minnesota said:

> If defendant (deaf driver) saw the boy as he now claims, he was not alert in stopping his car. If he did not see him as he is alleged to have stated to others, he was not keeping a sharp lookout in this crowded street.

The driver was held to be responsible for the accident.

The case of *Ward* v. *Koors*, in the Court of Appeals of Ohio, 6 Ohio Ops. 435, 33 N.E. 2d 669, involved a partially deaf young man, 20 years of age, who was driving his father's car. He drove the car on the wrong side of the road and injured other persons. They sued the driver and his father as well, claiming that it was negligent for the father to allow his deaf son to drive.

The Court of Appeals of Ohio held that the father could not be held responsible on this ground, since the son had a driver's license, he had a fairly good driving record, and his deafness did not contribute to the cause of the accident.

The general principle that is followed in these cases is that deafness alone will not make a driver liable for an automobile accident which may occur. But if the accident could have been avoided if the driver had been more careful, he may be held liable for that reason (see *Freas* v. *Campbell*, Pa., 48 Lanc. L. Rev. 464).

Where an emergency vehicle such as a police car or an ambulance has a siren operating, but the siren is not heard by the driver of another car for some proper reason, the failure to hear the siren is not significant. In the case of *Shaw* v. *Globe Indemnity Co.*, 1961, 134 So. 2d 608, the driver of a car did not hear the siren of an ambulance because his car windows were closed and the heater and fan were in operation. The Louisiana Court of Appeals held that this was reasonable cause for not hearing the siren and that this could not be held against the driver in a civil lawsuit. The same decision was reached in the case of *In re Gibson* which involved failure to hear a siren on a police car due to operation of an automobile radio and heater (Juvenile Court of Huron County, Ohio, 1961, 174 N.E. 148). However, a contrary conclusion was arrived at in the case of *Bull* v. *Drew,* 146 N.Y.S. 2d 85, 286 App. Div. 1138, reargument denied 1 A.D. 2d 793, 149 N.Y.S. 2d 235.

The fact that a siren was in operation does not necessarily mean that it was operated properly. In the case of *Washington* v. *City and County of San Francisco,* 1952, 111 Cal. App. 2d 368, 244 P. 2d 774, a police car had a siren in operation but it was sounding on its highest frequency. It was proven by the testimony of experts in the field that such a high frequency note was extremely difficult to hear. It was shown that if the siren had been operated at a lower pitch it would have been heard. In view of the improper operation of the siren, the plaintiff's failure to hear it was held to be immaterial, and the plaintiff was permitted to recover civil damages against the city and county.

When a driver has an automobile accident, even a minor one, many unpleasant things may arise. He may be sued by the other driver or by some passenger who was in either one of the cars. Criminal charges may be placed against him by the police department. State officers may revoke his driver's license. His insurance company may cancel his automobile insurance policy. For these reasons a deaf driver should take special precautions in handling any accidents in which he may be involved.

When an accident occurs, the first and most important thing to do is to look around and see if there are any witnesses to the accident. If there are other cars on the road whose drivers may have seen what happened, the license numbers of those cars should be written down. An attempt should be made to get the names and addresses of persons who saw what happened. If this is not done immediately, it may be impossible to locate those people later.

Next, the driver should get the license number, name, and address, and other information concerning the driver of the other car, a description of the car, the names of the passengers, and the name of the insurance company of the other driver.

Then, the driver should insist that both cars be left exactly where they were at the time of the accident while he has someone call the police. When the police arrive, the driver should ask them to take pictures of the position of the cars at the scene of the accident, particularly if the other car is on the wrong side of the road, or if it has some defect (such as no windshield wipers when it is raining, no tire chains when it is snowing). If the police will not take pictures of the automobiles, the driver should attempt to have these taken at once by a friend or by a professional photographer. It is a good idea for a driver to keep a small camera in his car at all times for this purpose.

The driver should examine the other car carefully and write down an exact description of the damage. If there is no damage to the other car, he should call attention of this fact to the police or to any other witnesses who may be present. The driver should also call attention to the position of any broken glass on the road, skid marks, or other evidence. Pictures should be obtained of these things at once if possible since skid marks and similar items of evidence will not remain on the pavement for long.

The driver should immediately call his attorney, who will then be able to take charge of the case, collect the necessary evidence, and do whatever he can to protect his client. The driver should call his insurance agent at once and report the accident. He should also write a letter to the main office of the insurance company as soon as possible, giving the basic facts concerning the accident. A driver should never conceal even a minor accident from his insurance company because this may automatically void the policy, and the insurance company may then refuse responsibility for any later accidents that may occur.

The policeman who comes to the scene of the accident will undoubtedly ask the deaf driver (probably in writing) if he is hurt. The driver should be very careful about replying. Internal injuries such as concussions, cracked bones, injured blood vessels, and partially ruptured internal organs, may not be felt immediately during the excitement of the accident, but may become very apparent a few hours later. If the deaf driver has made a statement that he was not hurt at the time of the accident, this may cause great difficulty for him later if it turns out that the statement was actually incorrect.

The driver should write down the badge number of the policeman who comes to the scene of the accident, and the number of the police car. If the policeman will give the driver a copy of the police report, the driver should take it. If the policeman will not furnish one, the driver should ask the policeman where a copy can be obtained.

The driver should furnish to the other driver his name and address, his driver's license number, the name of his insurance company, the name of his lawyer, and any other reasonable information. A driver should never leave the scene of the accident until the policeman has told him that he is free to leave. If the policeman gives a traffic ticket to the other driver, the driver should ascertain the date of the court hearing on the ticket, the time and place of the hearing, and the nature of the charge.

After leaving the scene of the accident, the driver should seek proper medical examination and treatment either by his own doctor or at a hospital. It is advisable to have X-rays taken if the injuries are serious. The driver should take his automobile to a repair shop and secure an estimate of the damage to his car. It is important that the estimate show exactly what damage has been done. The driver should not return to work until his doctor has approved of his doing so.

If the accident is serious, the driver should consult his attorney. He should never assume that "the insurance company will take care of it." The interests of the insurance company and that of the driver may be entirely different and of course, an insurance company cannot bring a suit for personal injuries against the other driver, it cannot defend on a criminal charge, and it generally is not at all interested in the driver's problems with his driver's license qualifications.

The driver should be sure to fill out any accident report forms required by any agency of his State, and to see that they are filed within the proper time limit. The driver should generally seek legal advice before filling out such forms.

Section 23

Railroad Accidents Involving the Deaf

There are more State supreme court cases concerning railroad accidents that involved the deaf than there are on any other subject involving the deaf. This should not be taken to mean that the deaf are more likely to be struck by railroad trains than they are to be involved in other types of accidents. The fact is that railroad accidents are likely to be extremely severe in nature, frequently being fatal, and therefore, since there is more at stake in such cases, they are more likely to be appealed to a State supreme court.

The most common situation in this area is that a deaf person is walking along the railroad tracks and is struck from behind by a train. In this event the railroad company is likely to take the position that the deaf person was a trespasser on its right-of-way; that the engineer blew his horn or sounded the whistle when he saw him on the track ahead of the train; and that it was entirely the other person's fault that he did not hear the warning and get off the tracks.

The deaf person is likely to contend that the men in charge of the train saw him on the tracks in plenty of time to stop the train to avoid hitting him.

The following cases are typical of those in which deaf persons have succeeded in winning cases against railroad companies in such situations:

The case of *Alabama & V. Ry. Co.* v. *Kelly*, 126 Miss. 276, 88 So. 707, involved the following facts:

> The material facts, briefly stated, are as follows: William G. Kelly, a minor about 12 years old, was an inmate of the Deaf and Dumb Institute in Jackson. One Sunday morning between 10:30 and 11 o'clock this boy with several other deaf-and-dumb boys started from this institute to a pool to go in swimming. The testimony for the plaintiff in the lower court was to the effect that Kelly and two other boys got upon the railroad track at or near a crossing near the institute grounds, and that Kelley walked from this crossing with his head down to the point where he was killed on the end of the crossties. Two other boys walked part of the way on the railroad track and the others walked near the track. The boy was struck and killed by a westbound passenger train of the defendant at a culvert. The distance from where the boy got on the railroad track to the place where he was killed, according to the

> testimony of a civil engineer who testified for the appellant, is 618 yards. There is a curve in the railroad which extends west of the crossing, and according to this same engineer's testimony, it is 299 yards from the end of the curve to the point where the boy was killed. It was testified by some of these deaf-and-dumb boys that while the train was in some part of the curve it sounded a whistle for one of the boys on the track, and that it also sounded its whistle a second time either for the road crossing or at one of these boys. This testimony is explained by these little boys stating that they were looking at the engine and knew from the exhaust of the smokestack that the whistle was being blown. They testified that about this time the other two boys got off the track, but that the deceased continued to walk on the end of the crossties with his head down until he was struck and killed.
>
> Two of these boys, appreciating the peril of the deceased, attempted to run to him and warn him of the approach of the train, but failed to reach him in time.
>
> It is also testified by some of these mutes that the speed of the train was not checked until after the boy was struck, but that the train continued at the same rate of speed, which the engineer testified was 30 miles an hour.
>
> (At pp. 707 and 708.)

In view of these facts the jury held that the train engineer should have realized at a point where the train was far enough away to be stopped that the boy would not heed the warning signals, and the engineer accordingly should have stopped the train. The verdict was in favor of the deaf boy and this verdict was upheld on appeal.

The case of *James* v. *Iowa Cent. Ry. Co.*, 183 Iowa 231, 165 N.W. 999, involved a woman 42 years old who was wholly deaf. The facts were described by the court as follows:

> The bell was rung by the fireman all the time from 12th Street until the collision. The witness testified farther that decedent gave no heed to the warning, but "walked straight ahead in the middle of the track, and never looked to the right or left"; that he kept his eyes on her, and when northwest of 6th Street crossing, said to the engineer, "George, I don't believe she is going to get off the track"; that the engineer made no response; that the train was about 350 feet long, and ran about two train lengths to the point where decedent was hit.
>
> (At p. 1000.)

The Supreme Court of Iowa explained the law that applied to this situation as follows:

> Said (railroad) employes had the right to assume that decedent (deaf woman) would leave the track up to the time it became apparent to them, as ordinarily cautious and prudent men, that for some reason she was not likely to do so.
>
> (At p. 1000.)

The jury found that the railroad employees had been negligent in not realizing in time that the woman would not leave the track, and in not stopping the train. The judgment was in favor of the decedent, and this was upheld on appeal.

A similar case was that of *Dupree* v. *Wabash R. Co.*, 155 Iowa 544, 136 N.W. 695, in which the Iowa Supreme Court explain the principle of law in these terms:

> * * * whenever it became apparent to the engineer that the trespasser was oblivious of his danger and would not be likely to save himself on that account, then it became the duty of the engineer to make all reasonable effort to avoid injury.
> (At p. 696.)

The jury verdict in favor of a deaf trespasser on the railroad tracks was upheld.

The case of *C. B. & Q. R.R. Co.* v. *Triplett,* 38 Ill. 483 (reprint p. 367), involved a partially deaf person who crossed the railroad tracks at a crossing. The train failed to sound its whistle and bell continuously as it came to the crossing. The attorney for the railroad argued that this made no difference since the deaf man could not have heard the signals anyway. The Illinois Supreme Court rejected this argument and said.

> * * * because he did not hear a whistle at the distance of 80 rods, it is hardly to be inferred that he would not have heard it at a distance of 10 or 20. The Legislature have very wisely required that the whistle shall be continuously sounded, or the bell rung, for the distance of 80 rods before reaching the crossing; it has imposed a penalty for non-compliance, and it can not be permitted to railways to excuse themselves from disobedience, by assuming that a failure to hear or regard the whistle, when sounded at the most remote point, is conclusive evidence that the passerby would be unable to hear it at a nearer point, or that he would disregard it, and devote himself to voluntary destruction. The deceased may have been partially deaf, but he was at least entitled to such warning of the approach of danger as the law designs to give those in full possession of their faculties, and to enjoy such chances as his infirmity left him of hearing, and being saved by the warning.
> (At pp. 487 and 488.)

A very similar case involving an electric street railroad is that of *Brereton* v. *Milford & U. St. Ry. Co.*, 223 Mass. 130, 111 N.E. 715, in which the conductor failed to give the usual warning signal. The verdict was in favor of the deaf person although he could not have heard that signal even if it had been sounded.

These cases set forth the very interesting principle that a deaf person is entitled to the usual warning bell or whistle, even though he might not able to hear it; and if it is not given this may entitle him to recover.

Of course, verdicts in favor of deaf persons have been rendered in railroad cases based upon a wide variety of circumstances. In the case of *Hayes* v. *Mich. Cent. R.R. Co.*, 111 U.S. 228, 28 L. Ed. 411, the plaintiff was described as follows:

> The plaintiff was a boy between 8 and 9 years of age, bright and well grown, but deaf and dumb.
> (At p. 412.)

A fence along the side of the railroad track was broken and the boy entered upon the tracks, was struck by a train and his left arm was severed. It was apparent that the boy was a trespasser and that the railroad engineer did not have sufficient opportunity to stop the train in time. However, the railroad was held liable anyway in allowing the fence to remain broken.

The courts generally state that a deaf person on or near railroad tracks is required to use all due care for his own safety, taking into consideration his handicap. This means that he is required to exercise more care than would a person without such a disability. If the deaf person fails to use his eyes he is generally said to be "contributorily negligent" and he cannot recover for any injury he may sustain.

On the other hand, once the railroad employees realize (or should realize) that the person on the tracks cannot hear the signals and is not aware the train is approaching, then it is their duty to stop the train immediately. If they do not do this, the railroad is liable for the deaf person's injuries, regardless of the fact that he was negligent in remaining on the tracks. This is sometimes called the doctrine of "the last clear chance," or the doctrine of "discovered peril"; or it may be said that the railroad employees were guilty of gross negligence or willful and wanton conduct.

The cases on the following pages have been collected from throughout the Nation. They will be of special use and importance to lawyers and judges who are in need of legal precedent in their particular State. Most of the cases involved death or loss of limbs of deaf persons.

In the following cases it was held that the deaf person was entitled to recover against the railroad under the facts of each case:

Arkansas:

- *Ft. Smith Light & T. Co.* v. *Barnes*, 80 Ark. 169, 96 S.W. 976 (A woman, whose hearing was very defective, walked across streetcar tracks without looking and was struck by a trolley. The motorman had sufficent time to stop the car but failed to do so).
- *Arkansas Central Ry. Co.* v. *Morgan*, 129 Ark. 67, 195 S.W. 403 (A totally deaf man, walking along the tracks, was struck by a car operated by railroad employees who knew he was deaf).

California:

- *Poak* v. *Pacific Elec. R. Co.*, 177 Cal. 190, 170 P. 159 (a deaf woman was alighting from the rear of a streetcar and did not hear the motorman at the front signal that he was about to start the streetcar moving).

Georgia:

- *Atlanta Cons. St. R. Co.* v. *Bates*, 103 Ga. 333, 30 S.E. 41 (a man with impaired hearing struck by a train after alighting from another train).

Kentucky:

Louisville & N. R.R. Co. v. *Perry's Admr.*, 173 Ky. 213, 190 S.W. 1064 (a deaf man walking down the track was struck from behind by a train although the engineer had ample time to stop).

Louisiana:

Russo v. *Tex. & P. Ry. Co.*, 189 La. 1042, 181 So. 485 (a man with defective hearing walked along tracks and was struck from behind by a train).

New York:

Cowan v. *Third Ave. Ry. Co.*, 56 Hun 644, 9 N.Y. Supp. 610, 132 N.Y. 598 (a woman, who was a little deaf, walked across cable car tracks at a crosswalk and was struck by a train).

South Carolina:

Osteen v. *Southern Ry. Co.*, 76 S.C. 368, 57 S.E. 196 (a hard of hearing man drove across the tracks at a crossing. There is a long discussion of jury instructions in the decision).

Tennessee:

Railroad v. *Acuff*, 92 Tenn. 26, 20 S.W. 348 (a totally deaf man was walking along tracks and was struck from behind by a train).

Texas:

Texas & P. Ry. Co. v. *Bron*, 20 Tex. Civ. App. 351, 50 S.W. 613 (a deaf man was removing his luggage from a railroad train and was injured because he did not hear the train start).

Houston & T. C. R. Co. v. *Harrison (Tex. C.C.A.)*, 54 S.W. 629 (a hard-of-hearing man walking along the tracks was struck from behind by a train. The engineer was not watching the track and made no effort to stop the train).

International & G. N. Ry. Co. v. *Munn*, 46 Tex. Civ. App. 276, 102 S.W. 442 (a totally deaf man walking along the tracks was struck in the back by a train. The engineer had ample time to realize the man did not intend to leave the tracks, and could have stopped the train).

Utah:

Thompson v. *Salt L. Rt. Co.*, 16 Utah 281, 52 Pac. 92 (a totally deaf boy, 14 years old, crossed over streetcar tracks without looking and was struck by a train which was unable to stop due to defective brakes).

Michigan:

Bedell v. *Detroit, Y. & A. A. Ry.*, 131 Mich. 668, 92 N.W. 349 (a deaf man, riding a bicycle near the trolley tracks, was struck in back by a streetcar. The motorman should have realized the man was deaf).

Federal Court:

Chesapeake & O. Ry. v. *Craft*, 162 F. 2d 67 (4th Cir. 1947) (a totally deaf man walking along the tracks was struck from behind by a train. The engineer should have realized that the man did not hear the warning signals).

In the following cases it was held that the deaf person was entitled to a jury trial on the questions of negligence that were involved in the cases. These were cases where the appellate courts ordered a new trial due to improper instructions given to the jury at the trial in the lower court.

Alabama:

Birmingham Ry. L. & P. Co. v. *Norton*, 7 Ala. App. 571, 61 So. 459 (a totally deaf man crossed the streetcar tracks in the middle of the block without looking and was struck by a car).

Frazier's Admr. v. *South & North Ala., R. Co.*, 81 Ala. 185, 1 So. 85 (a deaf man walked along the tracks and was struck from behind by a train).

Louisville & N. R. Co. v. *Balck*, 89 Ala. 313, 8 So. 246 (a totally deaf man walked along the tracks and was struck from behind by a train).

Arkansas:

Arkansas Central R. Co. v. *Fain*, 85 Ark. 532 (a deaf man stopped on the tracks to tie his shoelace and was struck by a train).

Davis v. *Scott*, 151 Ark. 34, 235 S.W. 407 (a totally deaf person ran over tracks on a pathway when he knew a train was approaching. He was struck by the train operated at a high rate of speed).

Illinois:

Toledo St. Louis & W. Ry. Co. v. *Smart*, 116 Ill. App. 523 (a hard of hearing man walked across the tracks at a crossing without looking and was struck by a train traveling at an excessive rate of speed).

Iowa:

Haven v. *Chicago, M. & St. P. Ry. Co.*, 188 Iowa 1266, 175 N.W. 587 (a slightly deaf man was attempting to recover his hat which had been blown into the street. He was struck by a train which failed to give any warning signal).

Oliver v. *Iowa Central Ry. Co.*, 122 Iowa 217, 97 N.W. 1072 (a slightly deaf man, standing near the tracks in a public street, was struck by a train).

Kentucky:

Louisville & N. R. Co. v. *McCombs*, 21 Ky. Law Rep. 1232, 54 S.W. 179 (a totally deaf man crossed the tracks by crawling under a freight train that had stopped. He was struck by another train that was traveling in excess of the legal speed limit).

Louisville & N. R. Co. v. *Wilson*, 285 Ky. 772, 149 S.W. 2d 545 (a totally deaf man, walking along the tracks, was struck from behind by a train).

Michigan:

Bond v. *Lake Shore & M. S. R. Co.*, 117 Mich. 652, 76 N.W. 102 (a woman, partially deaf in her left ear, did not stop her car at a crossing and was struck by a train).

Missouri:

Hall v. *Baldwin (Mo. App.)*, 90 S.W. 2d 146 (a totally deaf man, walking along the tracks, was struck from behind by a train).

March v. *Pitcairn*, Mo. 125 S.W. 2d 972 (a totally deaf man crossed over tracks at a crossing without raising his head to look).

Shanks v. *Springfield Traction Co.*, 101 Mo. App. 702, 74 S.W. 386 (a deaf man, walking along the streetcar tracks, was struck in back by a trolley. The motorman did not apply the brakes until the streetcar was almost upon the man).

New Hampshire:

Tyler v. *Concord & M. R. Co.*, 68 N.H. 331, 44 Atl. 524 (a very deaf man, walking over the tracks at a crossing, was interferred with by a group of children and struck by a train).

New Jersey:

Butelli v. *Jersey C., H. & R. Elec. Ry. Co.*, 59 N.J. L. 302, 36 Atl. 700

(a slightly deaf man, walking along the streetcar tracks on a public street, was struck by a train).

New York:

Drosky v. *Schenectady Ry. Co.*, 164 App. D. 406, 149 N.Y. Supp. 762 (a totally deaf man, crossing streetcar tracks at an intersection, was struck by a streetcar).

Ohio:

Cleveland, C. & C. R. Co. v. *Terry*, 8 Ohio 570 (a partially deaf woman, wearing a veil, crossed over tracks at an intersection and was struck by a train).

Pennsylvania:

Arnold v. *P. & R. R. Co.*, 161 Pa. 1, 28 Atl. 941 (a partially deaf woman, walking across the tracks, was struck by a train).

Central Railroad Co. of New Jersey v. *Feller*, 84 Pa. 226 (a partially deaf man drove over tracks at a crossing where the view was obstructed by a structure erected by the railroad, and was struck by a train).

Texas:

International & G. N. Ry. Co. v. *Gorcia*, 75 Tex. 583, 13 S.W. 223 (a deaf man, walking across tracks at public crossing, was struck by a train).

West Virginia:

Wendell v. *Payne*, 89 W. Va. 35, 109 S.E. 734 (a totally deaf man, walking along the tracks, was struck from behind by a train. The engineer had seen him in ample time to stop the train. The railroad company agent later obtained a release from the injured man under suspicious circumstances while he was still in the hospital).

Federal Courts:

Canadian P. R. Co. v. *Clark*, 73 F. 76 (a partially deaf man, driving over a railroad crossing where his view was obstructed, without stopping, was struck by a train).

In the following cases it was held that the deaf person, due to his own negligence, could not recover from the railroad under the specific facts of each case. Many of these cases are very similar to cases listed previously where it was held that the deaf person was entitled to recover. There is considerable conflict in the cases on this subject, not only in different States but also in similar cases in the same State. The courts have apparently had considerable trouble in attempting to decide what legal principles should be applied to these cases involving deaf persons.

Arkansas:

Chicago, R. I. & P. Ry. Co. v. *Tankersky*, 195 Ark. 365, 113 S.W. 2d 114 (a totally deaf child, 9 years old, walked across the tracks without looking and was struck by a train. Two judges dissented).

Colorado:

Kennedy v. *Denver, S. P. & P. R. Co.*, 10 Col. 493, 16 Pac. 210 (a partially deaf man walking along tracks was struck in back by a train. The court held it was immaterial that the conductor knew he was deaf and on the tracks, and had been warned to watch out for him. There is an interesting dissenting opinion).

Connecticut:

Kerr v. *Connecticut Co.*, 107 Conn. 304, 140 Atl. 751 (a man with very poor hearing walked along the streetcar tracks on a public street and was struck from behind by a train).

Nehring v. *Connecticut Co.*, 86 Conn. 169, 84 Atl. 301, 524 (a hard-of-hearing man, crossing streetcar tracks diagonally without looking, was struck from behind by a train).

Federal Courts:

Nein v. *La Crosse City Ry. Co.*, 92 Fed. 85, 34 C.C.A. 224 (a deaf man rode a bicycle near the streetcar tracks and was struck by a trolley).

Chicago, R. I. & P. Ry. Co. v. *Pounds*, 82 Fed. 217, 27 C.C.A. 17 (a deaf man drove across the tracks without looking and was struck by a train).

Georgia:

Cantrell v. *Pollard* (Ga. App.), 195 S.E. 766 (a somewhat deaf man was walking along the tracks and was struck in back by a train).

McIver v. *Georgia S. & F. Ry. Co.*, 108 Ga. 306, 33 S.E. 901 (a very deaf man crossed over the tracks at pathway at a time when he knew a train was approaching).

Roach v. *Atlanta, K. & N. Ry. Co.*, 119 Ga. 98, 45 S.E. 963 (a very deaf man walked across the railroad tracks at a pathway when he knew a train was approaching).

Southern Ry. Co. v. *Jay*, 137 Ga. 60, 72 S.E. 503 (a man with defective hearing, while walking across tracks at a public crossing without looking, was struck by a train which was backing up).

Illinois:

Bushman v. *Calumet & S. C. Ry. Co.*, 214 Ill. App. 435 (a deaf man crossed the tracks from behind a standing streetcar and was struck by another streetcar).

Carroll v. *Chicago, B. & Q. Ry. Co.*, 142 Ill. App. 195 (a totally deaf man, while walking down the tracks, was struck in back by train).

Illinois Central R. Co. v. *Buckner*, 28 Ill. 299, 81 Am. Dec. 282 (a partially deaf man, driving over tracks at crossing, did not keep a "vigilant lookout" and was struck by a train).

Indiana:

Bonham v. *Citizens St. Ry. Co.*, 158 Ind. 106, 62 N.E. 996 (a totally deaf boy, 13 years old, walked across the tracks at crossing and was struck by a streetcar).

Snow v. *Indianapolis Electric Ry. Co.*, 47 Ind. App. 189, 93 N.E. 1089 (a hard of hearing man drove across tracks at a crossing without stopping and was struck by a train).

Iowa:

Beem v. *Tarna & T. E. Ry. & Light Co.*, 104 Iowa 563, 73 N.W. 1045 (a quite deaf man walked across the tracks without looking and was struck by a train).

Kansas:

Butts v. *Atchison, T. & S.F. R. Co.*, 94 Kans. 328, 146 Pac. 1142 (a very deaf man, crossing 12 railroad tracks without looking carefully, was struck by a train traveling at an excessive rate of speed).

Kentucky:

Cox's Admr. v. *Louisville & N. R. Co.*, 31 Ky. Law Rep. 875, 104 S.W. 282 (a partially deaf man walked over tracks at a private crossing and was struck by a train).

Hummer's Excr. v. *Louisville & N. R. Co.*, 128 Ky. 486, 32 Ky. Law Rep. 1315 (a totally deaf man walked over the tracks at a public crossing and was struck by a train).

Johnson's Admr. v. *Louisville & N. R. Co.*, 91 Ky. 651, 25 S.W. 754 (a partially deaf man walked across the tracks at a private pathway without looking and was struck by a train).

Louisville & N. R. Co. v. *Gilmore's Admr.*, 33 Ky. Law Rep. 74, 109 S.W. 321 (a deaf woman walked across the tracks at a public crossing and was struck by a train).

Nashville, C. & St. L. R. Co. v. *Downing's Admr.*, 149 Ky. 731 (a deaf man running along the tracks was struck from behind by a train).

O'Dell's Admr. v. *Louisville & N. R. Co.*, 200 Ky. 745, 255 S.W. 550 (a deaf man walked along the tracks toward an approaching train without looking up).

Smith's Excr. v. *Cincinnati, N. O. & T. P. Ry. Co.*, 146 Ky. 568, 143 S.W. 1047 (a totally deaf man walked over the tracks at a footpath without looking).

Louisiana:

Johnson v. *Texas & P. Ry. Co.*, 16 La. App. 464, 133 So. 517 (a mentally ill deaf man, walking along the tracks, was struck in the back by a train).

Laicher v. *New Orleans, J. & G. N. R. Co.*, 28 La. 320 (a partially deaf man was walking along the railroad tracks and was struck from behind by a train).

Nelson v. *Texas & P. Ry. Co.*, 140 La. 676, 73 So. 769 (a hard-of-hearing man, 80 years of age, standing near the tracks at a station, was struck by a train backing up).

Perry v. *Louisiana & A. Ry. Co. (La. App.)*, 142 So. 736 (a deaf man crossed the tracks at a crossing and was struck by a train. The opinion contains long excerpts from the testimony of the railroad employees).

Schulte v. *New Orleans City & L. R. Co.*, 44 La. 509, 10 So. 811 (a hard-of-hearing woman walked across the streetcar tracks at a crossing while wearing a hat that obscured her view. She was struck by a train).

Schexnayde v. *Texas & P. Ry. Co.*, 46 La. 248, 14 So. 513 (a totally deaf man walked along the tracks and was struck in back by a train traveling at very high rate of speed).

Mississippi:

Hackney v. *Illinois C. R. Co. (Miss.)*, 33 So. 723 (a quite deaf man walked across a spur track and was struck by a slow-moving train which was operated without proper lookouts).

Mobile & O. R. Co. v. *Stroud*, 64 Miss. 784, 2 So. 171 (a deaf man, walking along tracks, stepped out of the way of one train and into the path of another).

Turner v. *Yazoo & M. V. R. Co. (Miss.)*, 33 So. 283 (a quite deaf man was walking along the tracks and was struck from behind by a train).

Maryland:

Bennett v. *Metropolitan St. Ry. Co.*, 122 Md. App. 703, 99 S.W. 480 (a deaf man, standing on streetcar tracks to watch men at work, was struck by a streetcar).

State v. *Baltimore & O. Ry. Co.*, 69 Md. 494, 16 Atl. 210, 9 A.L.R. 436 (a hard-of-hearing man, walking along the tracks, was struck in the back by a train).

Massachusetts:

Adams v. *Boston & N. St. Ry. Co.*, 191 Mass. 486, 73 N.E. 117 (a very deaf man walked along the tracks and was struck from behind by a train).

Allen v. *Boston & M. R. Co.*, 245 Mass. 139, 139 N.E. 511 (a totally deaf man, 61 years of age, crossed the tracks at an intersection without looking).

Hall v. *West End St. Ry. Co.*, 168 Mass. 461, 47 N.E. 124 (a very deaf man, walking across electric train tracks at a crossing, was struck by train going 4 miles per hour).

Smallwood v. *Boston El. Ry. Co.*, 217 Mass. 375, 104 N.E. 748 (a very deaf man walked across the tracks in the middle of the block and was was struck by a train).

Michigan:

Phillips v. *Detroit, G. H. & M. Ry. Co.*, 111 Mich. 274, 69 N.W. 496 (a quite deaf man, driving over tracks at a crossing where his view was partially obstructed, did not stop and was struck by a train).

Piskorowski v. *Detroit, & C. Ry. Co.*, 121 Mich. 498, 80 N.W. 241 (a quite deaf man, walking across tracks at a crossing, was struck by handcar that was going very slowly and could easily have been stopped).

Missouri:

Carrier v. *Missouri P. Ry. Co.*, 175 Mo. 470, 74 S.W. 1002 (a totally deaf man was walking along the tracks and was struck from behind by a train).

Maloy v. *Wabash, St. L. & P. Ry. Co.*, 84 Mo. 271 (a hard-of-hearing man walked on tracks over a trestle and was struck by a train).

Purl v. *St. Louis, K. C. & N. Ry. Co.*, 72 Mo. 168 (a deaf man drove over the tracks at a crossing without looking both ways and was struck by a train).

Schmidt v. *Missouri O. R. C.*, 191 Mo. 215, 90 S.W. 136 (a hard-of-hearing man walked over the tracks at a public crossing without looking, and was struck by train going at a rate of speed higher than permitted by law).

Zimmerman v. *St. Joseph R. Co.*, 71 Mo. 476 (a totally deaf man walked over the tracks without looking, although the train was in plain sight. This case contains long jury instructions).

Nebraska:

Hooker v. *Wabash R. Co.*, 99 Neb. 13, 154 N.W. 855 (a totally deaf man walked along the tracks and was struck from behind by a train).

New York:

Waldele v. *New York C. & H. R.R. Co.*, 19 Hun (N.Y.) 69 (without looking carefully, a totally deaf man walked over tracks at a crossing after one train had passed and another one approached).

North Carolina:

Bailey v. *Balck Mt. Ry. Co.*, 196 N.C. 515, 146 S.E. 135 (a deaf man, 73 years old, walked across the tracks at a public crossing without looking).

Mitchell v. *Seaboard A. L. Ry. Co.*, 153 N.C. 116, 68 S.E. 1059 (a totally deaf man crossed the tracks from behind another train without looking).

Poole v. *North Carolina R. Co.*, 53 N.C. 340 (a totally deaf man, walking on the railroad tracks, was struck in back by a train).

Ohio:

New York, C. & St. L. Ry. Co. v. *Kistler*, 66 Ohio 326, 64 N.E. 130 (a deaf man and his young daughter with normal hearing drove across the tracks at a crossing where their view was obstructed. They were struck by a train).

Oregon:

Cogswell v. *Oregon & C. R. Co.*, 6 Ore. 417 (a deaf man, walking along the tracks, was struck in the back by a train).

Pennsylvania:

Krenn v. *Pittsburgh, C. C. & St. L. Ry. Co.*, 259 Pa. 443, 103 Atl. 299 (a somewhat deaf man, walking over tracks at a crossing with a train in plain sight, was struck by the train).

Rhode Island:

Ormsbee v. *Boston & P. R. Co.*, 14 R.I. 102 (a totally deaf man, walking over the tracks at a crossing without looking, was struck by a train).

Texas:

Artusy v. *Missouri P. Ry. Co.*, 73 Tex. 191, 11 S.W. 177 (a man with defective hearing, walking on the tracks, was struck in back by a train).

Fontana v. *Port Arthur Traction Co. (Tex. Civ. App.)*, 235 S.W. 1098 (a totally deaf man walked along the trolley tracks and was struck in back by a streetcar).

Galveston, H. & S. A. Ry. Co. v. *Price (Tex. Civ. App.)*, 240 S.W. 524 (a deaf man, reading a newspaper as he walked over a path crossing the railroad tracks, was struck by a train).

Galveston, H. & S. A. Ry. Co. v. *Ryon*, 80 Tex. 59, 15 S.W. 588; 70 Tex. 56, 7 S.W. 687 (a deaf man was standing on a path which crossed the tracks).

San Antonio & A. P. Ry. Co. v. *Singletary (Tex. Civ. App)*, 251 S.W. 325 (a deaf man drove his automobile over railroad tracks at a crossing without looking).

Virginia:

Tyler v. *Sites' Admr.*, 88 Va. 470, 13 S.E. 978; 90 Va. 539, 19 S.E. 174 (a totally deaf man, walking along the tracks towards an approaching train, was struck by the train).

Washington:

Hamlin v. *Columbia & P. S. R. Co.*, 37 Wash. 448, 79 Pac. 991 (a quite deaf woman walked along the railroad tracks without looking and was struck from behind by a train).

The case of *Texas Midland Ry. Co.* v. *Terry*, 27 Tax Civ. App. 341, 65 S.W. 697, involved a rather unusual situation. A deaf woman was riding as a passenger on a railroad. The conductor called out the name of the station at which the train had stopped. She misunderstood him and thought that it was her station. She got off the train and found that she was at the wrong station and sued the railroad for letting her off at the wrong place. She claimed that she had told the porter on the train the station at which she wished to get off, but this was disputed. The court held that unless she had informed the conductor of her destination, the railroad was not responsible for the mistake.

In the case of *Texas & P. Ry. Co.* v. *Reid*, Tex. CCA, 74 S.W. 99, an old, deaf, and crippled woman was riding as a passenger on the railroad and was let off at a station where the facilities were very poor. Due to her handicaps, she was injured while trying to leave the station. The railroad company claimed that she should have had someone meet her at the station to help her; but the Texas Appellate Court held that the railroad was responsible for providing proper facilities for all passengers, regardless of their handicaps. The woman was not required to get someone to help her because of the improper facilities. The railroad was held liable for her injuries.

SECTION 24

Accidents Involving Deaf Employees

The case of *C. & A. R.R. Co.* v. *Dubois,* 65 Ill. App. 142, involved a partially deaf workman who was employed as a boiler inspector. He used the hammer test in testing bolts in the boiler of a locomotive. This test depended on being able to detect the difference between the sound made by a broken bolt and the sound made by a whole bolt when struck with a hammer.

A few days after he had tested a boiler, it exploded while in use and three men were killed. It was alleged that the explosion was due to broken bolts which the deaf inspector had failed to detect, and his employer was sued for employing such a workman. The Illinois Appellate Court held that there was no proof that the workman was incompetent for his position since there was testimony that he was able to hear well enough to perform the necessary test, even though he could not hear well enough to do certain other things. (The workman was to be judged by what he could do, not by what he could not do.)

A similar case was that of *McCann* v. *Sadowski,* 287 Pa. 294, 135 Atl. 207, in which a flagman employed by a railroad company was deaf. He was struck by an automobile while working, and he sued the driver of the car. The driver defended on the ground that the flagman was guilty of contributory negligence by working on the streets as a flagman while he was deaf. However, the Supreme Court of Pennsylvania refused to accept this argument and held that the deafness of the flagman was immaterial.

In the case of *Houston & T. C. Ry. Co.* v. *O'Donnell,* 99 Tex. 636, 92 S.W. 409, a deaf man was employed repairing fences along a railroad track. He was struck by a train which did not sound its whistle as it was supposed to do. It was held to be a question for the jury as to whether the deaf man could collect from the railroad company for his injuries.

Likewise, in the case of *Toledo, P. & W. Ry. Co.* v. *Hammett,* 220 Ill. 99, 77 N.E. 72, a hard-of-hearing man was employed as a watchman for a railroad. He walked across the tracks into the path of a train. It was held to be a question for the jury as to whether the railroad was responsible for the accident.

In the case of *Lyons* v. *Bay Cities Ry. Co.,* 115 Mich. 114, 73

N.W. 139, a deaf man was employed as a city streetsweeper. He was sweeping the street on a railroad crossing and was struck and killed by a train. It was proven that the deaf man had known that trains passed there frequently. The train had been in plain sight for over 2,000 feet but the deaf man had not looked up. It was held that the railroad company was not responsible for his death. Similarly, in the case of *Dix* v. *Atlantic C. L. Ry. Co.*, 98 S.C. 492, a hard-of-hearing man was working on railroad tracks without exercising proper care. He could not recover for his injuries when he was struck by a train.

In the case of *Williams* v. *Chicago M. & St. P. Ry. Co.*, 139 Iowa 552, 117 N.W. 956, a partially deaf man was employed as a mailman. He drove across railroad tracks without looking and was struck by a train. The train had failed to give the crossing signals required by law, but it was held that the railroad did not have to pay the mailman for his injuries because he had been negligent in failing to look before crossing the tracks. Since he was a mailman and traveled considerably every day, he should have known the danger he was running in crossing without looking.

Another case of this type is *Place* v. *Grand Trunk Ry.*, 82 Vt. 42, 71 Atl. 836, in which a deaf man had been employed as an engineer for many years. One day his train was sent over a wrong switch and he did not hear the noise of the wheels passing over the switch. It was claimed that he should not have been employed in that position and the accident that resulted was due to his lack of hearing. The court held that this did not necessarily make him incompetent, and that it was one of the facts of the case to be considered by the jury.

However, there are also a number of cases on record in which employers were held liable for damages because they had employed deaf persons in positions that were unsuitable in view of their hearing handicap.

In the case of *Cecil Lumber Co.* v. *McLeod*, 122 Miss. 767, 85 So. 78, a deaf man was placed in charge of machinery. Another employee was caught in the cogs of the machine. The facts were described by the court as follows:

> When his clothes were first caught in the cogs he began to cry aloud to the employee named Jones, a negro boy, who was in charge of the controlling lever about 40 feet away, to stop the machinery. Jones, whose back was to the appellee, was deaf and could not hear the call of appellee. Other employees heard the loud appeals of the appellee, and one of them, who was about 40 feet distance away, ran to the appellee and attempted to pull him loose from the machinery before it had begun to actually crush his flesh, but, failing in the attempt, this employee went on then a distance of 40 feet farther to where the deaf employee,

> Jones, was in charge of the lever, brushed him aside, and quickly stopped and reversed the machinery, releasing appellee and preventing further injury to him.

The Supreme Court of Mississippi held that the employer was liable for employing such a person in this position, in charge of dangerous machinery.

In the case of *Harding* v. *Ostrander Ry. & Timber Co.*, 64 Wash. 224, 116 Pa. 635, a deaf man was employed as a helper in a logging operation. He was in danger from a falling tree and his foreman tried to warn him but he did not hear the warning. The foreman made an effort to warn him again, and by staying where he was he was himself injured by the falling tree. It was held that under these facts and the other facts of the case, the foreman might have a good cause for action against the logging company, partly because they had hired such an employee.

This case involves the interesting principle that a deaf person (or his employer) may be liable for injuries caused to someone who is trying to save the deaf person from some danger of which he is not aware.

The case of *Anderson* v. *New York & T. S. S. Co.*, 47 Fed. 38, 50 Fed. 462, involved a deaf man who was employed to operate a steam winch, which required good hearing. One of the other employees was injured by the winch and the jury held the employer liable. The decision was upheld on appeal.

The case of *Melton* v. *E. E. Jackson Lumber Co.*, 133 Ala. 580, 31 So. 848, involved a deaf man who was employed in a lumbering operation. He was injured by a falling tree and claimed that the other employees had not given him sufficient warning of the fall of the tree. The Supreme Court of Alabama described the facts as follows:

> He was deaf, but his sight was unimpaired. He, of course, knew (for he had been there several days while that work was going on) that trees were being felled all the time where he was working. Jones was under no duty to tell him that this was being done. He knew it as well as Jones did. The danger incident to the felling of trees is, of course, perfectly obvious, and Jones was under no duty to warn him as to it. He could see and appreciate that as well as Jones could. The fact that he was deaf did not impose any duty upon Jones to warn him of danger whose presence addressed itself to his unimpaired sense of sight, but, rather, emphasized his own duty of greater vigilance in the use of that sense. But, as matter of fact, Jones did take cognizance of his infirmity of hearing, and, out of abundance of caution, put him to work with Seals, an acquaintance and friend of the plaintiff, and who could converse with him by the use of the finger alphabet, while Jones could not, and charged Seals not to let him get hurt in any way. Seals was working with him at the time of the injury, and he did all that was possible to save him from the falling tree, by pushing him, both to call his attention to the danger, and to put him beyond its path.

> At the moment, plaintiff's back was to Seals, and the communication could only be made in the way adopted.
> (At p. 849.)

It was held that the employer was not liable for the injuries suffered by the deaf man since the employer had not been negligent in any manner.

Deaf persons frequently complain that employers refuse to hire them because if an accident should occur, the employer might be sued by some member of the public who was injured on the ground that it was negligent of the employer to use a deaf person in that position. The above cases indicate that there is some danger of this happening if the deaf person is placed in a position where his hearing impairment creates a danger to other persons. However, these cases also indicate that there is no such danger if the employee is placed in a position where his handicap cannot affect the work that is done. The question is mainly that of proper placement.

Other Accident Cases Involving the Deaf

The case of *Harris* v. *Indiana General Service Co.*, 206 Ind. 351, 189 N.E. 410, involved a deaf youth, 18 years of age, who could not read or write. He climbed a tower carrying electric cables with a charge of 35,000 volts, although a warning sign had been placed on the tower. The Supreme Court of Indiana described the matter as follows:

> That on May 12, 1925, the time of the injury complained of, plaintiff was 18 years of age, and lived with his parents on said farm. The plaintiff was a strong, muscular boy, able to and did do many kinds of manual labor. That when plaintiff was about 1 year of age he had an attack of scarlet fever which caused him to be deaf and dumb ever since, and on account of which condition he secured very little education, was not able to read or comprehend the meaning of written words and languages, and at the time of the injury he was unable to read or understand the meaning of said sign attached to the above-described tower, and that plaintiff's mental capacity and attainments were no more than those of a small child of not more than 6 years old, and that he did not comprehend the danger connected with climbing upon said tower.
> (At p. 412.)

The court held that the youth could recover against the utility company for its negligence in not properly guarding the tower, in spite of the fact that he had been a trespasser.

The case of *Brown* v. *Stevens*, 136 Mich. 311, 99 N.W. 12, involved a man with defective hearing and eyesight who entered a store to buy something. There was an open trapdoor in the center of the floor of the store. The storekeeper warned him about the trapdoor in a normal tone of voice, but the man did not hear and fell through and was severely injured. The storekeeper argued that he did not know the man was deaf and that he had fulfilled his duty by warning him of the danger in a normal tone of voice.

The Supreme Court of Michigan refused to accept this reasoning and said:

> Under the circumstances it was their duty to do something more than to tell him in an ordinary tone of voice to look out for the trapdoor.

The storekeeper was, therefore, liable for the injuries that the deaf man had suffered.

SECTION 25

Damages for Deafness

It is very difficult to state any general rule as to how much deafness is worth in terms of monetary damages. Naturally a greater loss of hearing should be worth more than a smaller loss. An 80-percent loss should be worth more than a 30-percent loss. However, there are so many other factors involved that the degree of the loss of hearing may not, by any means, be the most significant.

For example, the age of the person involved is highly important. Deafness to a boy of 12 would mean much more than deafness to a person who is 70 years old. A young person has his life before him, while an older person's life may be nearly over. The effect of the deafness on the person's occupation is vitally important. Deafness to a bricklayer or a printer might not be too important. To a businessman or a professional person, it might mean the limiting of his earning capacity. Likewise, deafness to a working man is more serious than deafness to a housewife, and deafness to an unmarried girl is more serious than deafness to a married woman since it may affect her ability to secure a marriage.

In considering damages for deafness, it is proper for the jury to consider the pain and physical suffering that might have been involved in the loss, and the pain and suffering that will follow in the future, the amount of the past medical bills and the amount of future medical expenses, and the amount that may have to be paid for hearing aids in the future. If the deafness has caused psychological damage, the jury may consider this factor. The jury may also consider the costs of rehabilitation and retraining that may be necessary to overcome the effects of the hearing handicap, prospective loss of wages and earning capacity, the effect of vertigo and dizziness, distraction due to tinnitus, future hazards which the person may have to undergo due to deafness, and his worry, embarrassment and inconvenience.

There are a number of cases on record dealing with damages for loss of hearing. These are cases where the loss of hearing was the principle injury and the other injuries suffered were of lesser importance. In the case of *Harris* v. *Lampert,* 131 Cal. App. 2d 751, 281 P. 2d 292, a machine shop employee suffered a skull fracture resulting in deafness and tinnitus which totally incapacitated him. A verdict in his favor for $47,369 was upheld. In the case of *Marchant* v. *American Airlines, Inc.*, 146 F. Supp. 612, aff. 249 Fed. 2d 612, a college professor suffered ruptured eardrums due to pressure differences in an airplane. This caused tinnitus and some permanent damage to his hearing. The verdict was for $24,500. In the case of *Drlik* v. *Imperial Oil Co. Ltd.*, 234 F. 2d 4, modifying 141 F. Supp. 388, a deckhand who made $3,600 a year, with a life expectancy of 14 years, was totally disabled by injuries which included deafness. The verdict was for $63,950 which was reduced by the court to $54,867. In the case of *Helma* v. *Thomas,* 120 Cal. App. 2d 265, 260 P. 2d 1016, a man suffered loss of hearing due to an assault and the jury verdict was for $30,100.

In the case of *Marchese* v. *Monaco,* 52 N.J. Super. 474, 145 A. 2d 809, a doctor treated a 48 years old patient with a drug called mycifradin sulfate. One of the known side effects of this drug was to cause deafness. The patient became totally and incurably deaf and also suffered from tinnitus. He sued the physician. He described this condition as follows:

> * * * like the blast of wind, just like the bursting of bombs, cricket sounds, whistling sounds, distant sounds, all sorts of sounds. I can't sleep nights.

A medical expert for the patient testified as to the seriousness of the tinnitus condition, as follows:

> I know that it is very disturbing to many patients whom we have to treat for this distressing condition; many of them are almost deranged by the character of the noise. Some of them have even threatened suicide and things of that type in very severe forms, and it is a very disturbing and distressing symptom which we cannot help very often.

The jury gave judgment to the patient against the physician for the sum of $56,000 and this was upheld on appeal.

Similarly, where a 61-year-old railroad engineer suffered multiple injuries, including a 22-percent loss of hearing, tinnitus, and dizziness. The jury verdict was for $65,000, which was, however, reduced by the courts to $35,000.

Cases which were decided only at the trial court level and were not appealed are much more difficult to locate, but two of them can be mentioned. In the case of *Jabe* v. *Milwaukee R. Co.*, a 61-year-old railroad fireman, who previously had defective hearing in his left ear, suffered complete loss of hearing in his right ear, which made it impossible for him to continue his employment. A verdict in his favor was rendered by the City Court of Evanston, Ill., on March 24, 1953, in the amount of $51,000. In the case of *Wetwicke* v. *Great Northern R. Co.*, a 37-year-old engineer suffered a loss of 30 to 35 percent in his hearing in both ears. The verdict of the District Court for the 4th Division of Minneapolis, Minn., was for $72,500 in his favor.

The "Statewide Jury Verdicts" publication for 1963 (published by Statewide Jury Verdicts Publishing Co. of Cleveland, Ohio) contains data based on a limited selection of jury verdicts involving a partial loss of hearing, generally in one ear. This publication indicated that the jury verdicts in the cases covered ranged between $1,200 and $35,000. This wide range of possible verdicts shows how difficult it is to predict the amount of damages that a jury might give for partial deafness.

It has been held by the Supreme Court of Kentucky that where a person sues for damages for deafness, the complaint filed in court by that person must clearly state that deafness is the injury complained of. In the case of *Louisville Ry. Co.* v. *Gough,* 113 Ky. 467, 118 S.W. 276, a woman sued a railroad and claimed that her head had been injured. At the trial of the case, she attempted to prove that she had lost her hearing. The court refused to let her prove this because this injury was not set forth clearly in the complaint and this claim of deafness would take the defendant by surprise. It was held that merely to complain of an injury to the head does not give the opponent proper notice of the injury actually suffered.

SECTION 26

Proof of Deafness

It is often necessary to prove that a person is deaf. This situation may arise where a person claims that his deafness was caused by another person, and the deaf person is suing for damages for his loss of hearing. There are generally three different methods that can be used to prove that the person is deaf:

1. The testimony of the person himself.
2. The testimony of witnesses who know him personally.
3. The testimony of experts who have examined the person.

It is the general rule that a witness must testify to facts and is not allowed merely to testify as to his own conclusions. Therefore, where the deaf person testifies as a witness as to the cause of his disability, it is improper to ask a question such as "How did you become deaf?", because this would be asking for the witness' personal conclusion. The proper method is illustrated as follows:

Q. What is your name?

A. John Smith.

Q. Before this accident on January 1, 19—, did you ever have trouble with your hearing?

A. No, I did not. I could hear everything fine.

Q. After the accident, what happened?

A. As soon as I woke up in the hospital, I found that I could not hear ordinary conversation. I could not hear telephones. I could only hear if someone shouts very loudly.

Q. Did this condition remain with you for any period of time?

A. Yes, I have had this condition from the time of the accident up to the present time.

A person's deafness may also be established by the testimony of other people who knew him. This may be done to provide additional evidence, in addition to the testimony of the deaf person himself. Here again, the witness cannot testify to his own conclusions, but only to the actual facts that he has observed. A proper line of questioning would be as follows:

Q. What is your name?

A. Bob Jones.

Q. Do you know the plaintiff in this case, Mr. John Smith?

A. Yes, I do.

Q. How long have you known him?

A. I have known him over 5 years. He lives next door to me.

Q. How long did you know him prior to the date of the accident in this case, which is January 1, 19—?

A. I knew him for about 3 years before that date.

Q. How long did you know him after that date?

A. I knew him for about 2 years after that date.

Q. Prior to that date, how often did you see Mr. Smith?

A. I saw him almost every day.

Q. During that time, did you speak to him?

A. Yes, I did.

Q. Were you present when other persons spoke to him?

A. Yes, I was.

Q. Was he able to hear ordinary conversation?

A. Yes, he was. He had no trouble answering questions that were asked of him in an ordinary tone of voice.

Q. Now, subsequent to that date that we are speaking of, January 1st, 19—, how often did you see Mr. Smith?

A. From the time that he came back from the hospital, I saw him almost every day.

Q. During that period of time after he came back from the hospital, did you speak to him frequently?

A. Yes, I spoke to him almost every day.

It was held in the case of *Quadlander* v. *Kansas City P.S. Co.*, 240 Mo. App. 1134, 224 S.W. 2d 396, that such evidence by someone who is acquainted with the allegedly deaf person is proper. See also *H. K. Ferguson Co.* v. *Kirk,* (Tenn.) 343 S.W. 2d 900 (testimony by wife and son); *Ball* v. *Sheldon,* 218 Fed. 800 (testimony by the deaf person herself).

A third method of proving deafness is by the testimony of an expert witness who has examined the person and is able to give a professional opinion on the matter. Such a line of questioning would be as follows:

Q. What is your name?

A. Dr. James Brown.

Q. What is your occupation?

A. I am a physician and I specialize in otology, in hearing and deafness. I have had — years of experience in this field, and I have the following professional qualifications * * *

Q. Have you examined Mr. John Smith?

A. Yes, I have.

Q. On what occasions did you examine him?

A. I examined him on the following dates * * *

Q. What means of examination did you use?

A. I used the following instruments and methods * * *

Q. What were the results of your examination?

A. His performance on the tests were as follows: * * *

Q. Have you examined him sufficiently to form a professional opinion in regard to his hearing ability at the time of your examinations?

A. Yes, I have.

Q. What are your conclusions as to his hearing ability at the time you examined him?

A. He was approximately 70 percent deaf in the left ear and 80 percent deaf in the right ear.

For a description of the tests used to detect deafness or establish hearing ability see the section "Posing as a Deaf Person."

It was held in the case of *O'Neil* v. *Dry Dock (etc.) Co.*, 15 N.Y. Supp. 84, affirmed 129 N.Y. 225, 29 N.E. 84, that a physician who did not specialize in deafness could testify as an expert as to the fact of deafness and its probable cause. It was held that a physician is supposed to have general knowledge of the functioning of the entire body including the ear, and therefore could act as an expert witness, although not a specialist in the field.

By using one or more of the three methods described above it has been proven in the following cases that deafness was caused by a blow to the head or similar injury:

Rupp v. *Zinter*, 29 Pa. D & C 625 (schoolteacher striking pupil on head).

Lundy v. *U.S. Shipping (etc.)*, 36 F. 2d 254 (seaman struck on head by a gangplank).

The *Uxal*, 49 F. Supp. 221 (seaman struck by boom of boat).

Guinn v. *Kemp*, 18 La. App. 3, 136 So. 764 (driver injured in automobile accident).

Brandock v. *A. T. & S. F. R. Co.*, (Mo.) 269 S.W. 2d 93 (railroad engineer injured in train collision).

Unterlacher v. *Wells*, 317 Mo. 181, 396 S.W. 755 (pedestrian hit by streetcar).

Quadlander v. *Kansas City (etc.)*, 240 Mo. App. 1134, 224 S.W. 2d 396 (bus passenger injured in collision).

Alisauskas v. *Itro*, 9 N.J. Misc. 1057, 156 A. 336 (child pedestrian struck by automobile).

Pfister v. *Cleveland*, (Ohio App.) 113 N.E. 2d 366 (streetcar passenger injured in collision).

Young v. *Cantz*, 85 R.I. 7, 125 A. 2d 181 (passenger in automobile injured in collision).

Ynsfran v. *Burkhart*, (Tex. Civ. App.) 247 S.W. 2d 907 (passenger in automobile injured in collision).

Doleys v. *Arndt*, 265 Wisc. 555, 61 N.W. 2d 889 (pedestrian struck by automobile).

McGraw v. *Wassman*, 263 Wisc. 486, 57 N.W. 2d 920 (passenger in automobile injured in accident; testimony of physician limited to facts proven).

It was proven in the case of *Andrews Min. & Mill Co.* v. *Atkinson*, 192 Okla. 322, 135 P. 2d 960, that deafness was caused by air compression; and it was proven in *Brannecke* v. *Ganahl Lum. Co.*, 329 Mo. 341, 44 S.W. 2d 627, that deafness was caused by carbon monoxide. In *Marchese* v. *Monaco*, 52 N.J. Super. 474, 145 A. 2d 809, it was proven that deafness was caused by being treated by a physician with a drug called mycifradin sulfate. See the sections dealing with Workman's Compensation matters and damages for deafness for other cases on this subject.

It should be kept in mind in proving deafness that an audiogram report is not admissable into evidence as proof of deafness without the testimony of the person who gave the test and recorded the results. In the case of *Quadlander* v. *Kansas City Public Service Co.*, 240 Mo. App. 1134, 224 S.W. 2d 396, an attempt was made to put an audiogram record into evidence without the testimony of the person who gave the test and recorded the results. The court held that this could not be done. The court pointed out that it requires expert knowledge to administer an audiogram test properly, and that the opponent should be given the opportunity to cross-examine the person who did this.

In regard to medical matters, the court may take judicial notice of certain medical facts without requiring actual proof. For example, in the case of *Prichard* v. *U.S.*, 133 Ct. Cl. 212, 135 F. Supp. 420, the Federal Court of Claims took judicial notice of the fact that heavy artillery fire could cause deafness of persons standing too close to the guns, and did not require proof of this medical fact. But in the case of *Katona* v. *Fed. S. & D. D. Co.*, 136 N.J.L. 474, 56 A. 2d 609, the New Jersey court refused to take judicial notice of the alleged fact that deafness in one ear might have the effect of causing hearing in the other ear to become more acute.

It is best to be prepared with proof of any medical facts that [illegible] established. Medical facts concerning deafness generally cannot be proven by the use of medical books. They can only be proven by the testimony of an expert in the field of deafness, who is subject to cross-examination as to his knowledge and his conclusions.

In the case of *Jensen* v. *Hamburg-American Packet Co.*, 23 App. Div. 163, 48 N.Y.S. 630, the court pointed out how difficult it may be to try and prove that a person is not deaf after he has testified that he is deaf. In this case the plaintiff claimed that a certain accident had caused him to become deaf, and he testified under oath that this was true. The defendant was unable to prove that this was not true. The jury gave judgment to the deaf man for his loss of hearing. After the judgment was given in his favor, the deaf man suddenly had no trouble hearing. It was apparent that his claim of deafness was untrue. The New York court ordered a new trial to be held at which evidence of this sudden restoration of the man's hearing would be permitted. However, it is doubtful that the courts would permit a verdict to be changed in this manner unless the matter were brought to the court's attention very quickly after the verdict was rendered. After a long period of time has elapsed, it is almost always held that the jury's verdict is final and cannot be changed. See the case of *Teche Lines* v. *Boyette*, 111 F. 2d 579, in which a new trial was refused where proof was obtained after the trial that the person was able to hear.

On the other hand, it may be very difficult for an injured person to establish that deafness was caused by an accident if the deafness does not appear immediately. When the deafness develops a considerable time after the accident has taken place, it may be extremely hard to prove the cause and effect relationship. On this point see the case of *Bierman* v. *Langston,* 304 S.W. 2d 865 (Mo.), where the deafness did not appear until 5 months after the accident had taken place and it was not proven that it was caused by the accident. The trial judge granted a new trial on the grounds that a verdict of $12,500 for a 20-percent loss of hearing in one year was excessive under these circumstances.

SECTION 27

Jury Instructions in Cases Involving the Deaf

When a case is tried before a jury, it is necessary for the court to instruct the jury as to the law that applies to the case. These jury instructions are generally prepared by the lawyers for the parties and they are read to the jury by the judge. There are many books in print of standard jury instructions that can be used on common and ordinary cases.

However, cases involving the deaf are generally unusual cases and frequently the standard jury instructions cannot be used. Special jury instructions must be prepared that cover the law applicable to the deaf person's case. The preparation of these special jury instructions is a highly technical task. In order to prepare them the attorney must have available an adequate collection of material dealing with the law that applies to the deaf. Up to the present time no such collection of materials was available anywhere in the country and so the preparation of proper jury instructions has been an extremely difficult undertaking. It is hoped that this book will help make the preparation of such jury instructions much easier in the future.

When preparing jury instructions that apply to the particular facts of the case, a question often arises as to whether or not the court should instruct the jury in a case involving a deaf person that they must not sympathize with the deaf person solely because he is deaf. This question was passed upon by the Michigan Supreme Court in the case of *Jakubiec* v. *Hasty,* 337 Mich. 205, 59 N.W. 2d 385. In this case the plantiff was a deaf woman, 18 years of age, who was struck by a taxicab. The attorneys for the taxicab company requested the trial court to give the following instruction to the jury:

> You must decide this case wholly on the evidence presented to you, and keep your minds and hearts free of any question of sympathy or prejudice.

The trial judge refused to give this instruction to the jury and the attorneys for the taxicab company appealed this ruling to the Michigan Supreme Court. The appellate court held that the failure to give this instruction was not a reversible error, and the judgment for the deaf woman was upheld.

SECTION 28

Libel and Slander

Libel and slander are the two main branches of the law of defamation of character. They consist of making some false and malicious statement about another person which tends to injure that other person in his reputation or his business.

Libel generally applies to written statements and slander applies to oral statements. The penalties for libel are usually somewhat greater than those for slander on the theory that a written statement does more damage than an oral one.

It has been argued that a defamatory statement made in the language of signs should be classified as a libel rather than a slander. It is pointed out that defamatory pictures and cartoons have always been regarded as being libels rather than slanders. Similarly, since it has been held that a motion picture may be considered to create a libel (*Brown* v. *Paramount Picture Corp.*, 270 N.Y.S. 544, 240 App. Div. 520), it is argued that the use of signs, which consist of actions or pictures, should likewise be classified as a libel.

This line of argument follows the theory that a libel is something visual that can be seen by the human eye. Therefore, since the language of signs is visual in nature, it should be considered a libel.

On the other hand it has been contended that the true distinction between libel and slander is not that of something visual as opposed to something oral. It is claimed that the true distinction between the two acts is that libel consists of a statement that is permanent in nature, while a slander is something transitory in nature. Under this line of reasoning, the use of language of signs would be classified as slander since it creates no permanent record. This theory is followed in the Restatement of Torts, which provides in section 568, commented (1934):

> * * * the use of a mere transitory gesture commonly understood as a substitute for spoken words, such as a nod of the head, a wave of the hand, or a sign of the fingers, is a slander rather than a libel.

Since there are no appellate cases on record dealing with the question, it must be regarded as open and debatable. However, the viewpoint taken in the Restatement of Torts seems to be more reasonable than the opposing viewpoint.

There is one particular subject in connection with the law of libel and slander which is often raised by the deaf. Persons who are deaf and unable to speak are often called "deaf and dumb" by the general public. This term is commonly resented by deaf persons since the word "dumb" has a double meaning, referring to one who is stupid or ignorant as well as to one who is mute. Where words which have a double meaning are used, whether a particular statement is defamatory or not depends upon the context of the statement. The complete term "deaf and dumb" is definitely not defamatory since it is well understood to mean the equivalent of deaf and mute. However, the term "dumb", used alone, may possibly constitute an actionable defamatory statement particularly where it is used in connection with the person's employment.

Each case will depend upon its particular facts and circumstances. There does not appear to be any appellate cases on record in any state. The general principles on this subject are still in a state of evolution. See "Remolding of Common Law Defamation" by A. E. Harum, 49 A.B.A.J. 149, February 1963.

SECTION 29

Preliminary Criminal Matters

When a crime has been committed the police may question a large number of persons in an effort to find anyone who appears to be acting in a suspicious manner. For example, if a jewelry store window is broken into late at night and the police arrive shortly after the crime has been committed, the police may drive around the neighborhood questioning anyone who is on the street. If a deaf person is encountered in such a situation the police may consider his actions to be suspicious because he cannot answer their questions in the usual manner.

It is quite common for deaf persons to be picked up by the police for further investigation in such situations. Once the deaf person is taken into custody, he may find it very difficult to get out. Police regulations usually require that a person who is arrested must be allowed one telephone call to a relative or an attorney. The right to make such a telephone call is extremely important because this is often the only means that the arrested person has of letting his family know where he is and arranging for bail.

Where the person is deaf, the police may take the position that they will allow him to make such a telephone call, but that they do not have to make it for him. In this case, the deaf person will not be able to communicate with anyone. When the deaf person is later brought before the court he will not have had any opportunity to arrange for an attorney, an interpreter, witnesses, or any other form of help or assistance. When the deaf person appears before the court the judge may not at first realize that the defendant is deaf and unable to speak. If the deaf person stands before the court silently he may lose the opportunity of letting the court know his situation.

When a deaf person is brought before a court, he should make every possible effort to communicate with the judge and secure his legal rights. The best way of doing this is to write out a note beforehand and give it to the judge as soon as he is brought before the court. An appropriate note might read as follows:

> Your Honor, I am a deaf man and cannot hear or speak.
> I ask for the protection of the court.

> I have been arrested in an illegal manner and have not been allowed to communicate with my lawyer or family.
>
> I do not know what offense I am charged with and ask that a copy of the indictment be given to me.
>
> Before I enter a plea, I request the opportunity to speak to an attorney of my choosing, or to have the court appoint an attorney for me.
>
> I ask that bond be set immediately, and that the Clerk of the Court be ordered to communicate with my family and my lawyer so that I can arrange for the bond to be paid.
>
> Due to my deafness, I have no way of doing these things myself, and I ask the court to safeguard my rights and to protect me.

If such a note is given to the court immediately when the case is called, it will make a great difference in the way it is handled. No one should ever stand silently when his case is called because his silence may be taken to mean that he does not wish to claim his legal rights and that he is waiving them.

If for any reason an arrested deaf person cannot make contact with his family or his attorney, he should request the opportunity to discuss his case with some member of the local bar association or legal aid office.

When a deaf person is questioned by the police, the questioning will generally be done by writing notes back and forth. The police will often keep these notes and any misstatement that the deaf person may make may be used against him. One who has only limited language ability and is in a highly excited state of mind may easily misunderstand some question and inadvertently make a statement that will damage his case. It is sometimes better for an arrested deaf man to refuse to answer any questions unless an interpreter and his attorney are present (see *Singer* v. *Florida,* 109 S. 2d 7).

A serious error that is frequently made by deaf persons is to think that, because they themselves know that they are innocent of any wrongdoing, they have nothing to worry about. They sometimes oversimplify the situation and think that since they are innocent they cannot be found guilty. This is a great error. The police, the court, and the jury will act on the basis of appearances and circumstances as they see them. Appearances are sometimes misleading, and innocent men have been convicted for crimes they never committed. The fact that a person is innocent does not mean that he has nothing to worry about. On the contrary, an innocent man may have a great deal to worry about, and should take great care to protect his legal rights and to properly defend himself.

SECTION 30

Criminal Responsibility of the Deaf

It has repeatedly been held by the courts of many States that a deaf person like any other person is subject to prosecution for any crimes that he may have committed. The deaf are no longer placed in the category of the mentally ill, and therefore they may be required to stand trial (*State* v. *Howard,* 118 Mo. 127; *Commonwealth* v. *Hill,* 14 Mass. 207; *State* v. *Early,* 211 N.C. 189, 189 S.E. 668; *Mothershead* v. *King,* 112 Fed. 2d 1004; *Singer* v. *Florida,* 109 S. 2d 7).

For example, in the case of *State* v. *Castelli,* 92 Conn. 58, 101 Atl. 476, a deaf woman was murdered by two deaf men, one of whom was her husband. Both men were held guilty and their deafness did not prevent their conviction.

The usual test of sanity applies to the deaf just as it applies to any other person, and the fact that the person is deaf is one factor to be considered in determining whether or not the individual is sane. In the case of *Belcher* v. *Commonwealth,* 165 Ky. 649, 177 S.W. 455, the Supreme Court of Kentucky said that deafness is:

> * * * simply a circumstance to be considered in connection with other evidence in determining whether he was mentally capable of committing the crime.

Similarly, in the case of *State* v. *Draper,* 1 Houston Crim. (Del.) 291, the Supreme Court of Delaware said that a deaf person could be convicted of a criminal offense if it were proved that he had:

> * * * capacity and reason sufficient to enable him to distinguish between right and wrong as to the act at the time when it was committed by him, and had a knowledge and consciousness that the act he was doing was wrong and criminal and would subject him to punishment.

Where a deaf person was convicted of murder, it was claimed that his handicap should be considered a mitigating circumstance, and therefore he should not be sentenced to death. But the Supreme Court of North Carolina held that this was a matter to be considered by the Governor of the State, as a question of executive clemency, but not a matter to be considered by the court (*State* v. *Early,* 211 N.C. 189, 189 S.E. 668).

However, where a person is deaf and unable to speak, and is also illiterate and there is no way at all in which to communicate with him, a different principle of law applies.

In the United States of America it is a firmly established principle of law that a person cannot be put on trial if his condition is such that he will not be able to understand the proceedings and make a proper defense.

For example, in the case of *Mothershead* v. *King*, 1940, Federal Circuit Court of Appeals, 112 Fed. Rep. 2d, pages 1004 to 1006, which involved a deaf person accused of burglary, the court said:

> The conviction of a person whose infirmities are such that he cannot understand or comprehend the proceedings resulting in his conviction and cannot defend himself against such charges, is violative of certain immutable principles of justice.

Likewise, in the case of *Sanders* v. *Allen*, 1938, 100 Fed. 2d, 717 to 720, which involved a woman who claimed that she had been put under the influence of narcotic drugs during her trial, the United States Court of Appeals said:

> The trial and conviction of a person mentally and physically incapable of making a defense violates certain immutable principles of justice which inhere in the very ideal of free government.

The inability of an accused person to stand trial usually arises either from physical illness or from mental illness (insanity). In either case the established procedure in the United States is to postpone the trial until the person recovers from his illness and is capable of standing trial. If the person is suffering from a physical illness, he will be put into a hospital or into the custody of his physician until he is well. If the person is suffering from insanity, he will be put into a mental institution until he recovers. If he never recovers, he will be kept in the mental institution for life.

But the case of an illiterate deaf person is entirely different. The person is not sick at all, either physically or mentally. His only defect is a lack of education which makes it impossible for him to communicate with other persons. For all practical purposes this condition is permanent.

Obviously, if such a person is put on trial, he suffers a terrible handicap. He cannot understand the nature of the trial. He cannot communicate with his own lawyer. He cannot understand what the witnesses against him are saying. If he has a perfectly sound defense, such as self-defense, he would have no way of presenting it. He cannot even testify in his own behalf. He has no way at all of defending himself against a false charge. It would be easy under such conditions for a guilty person to "frame" such a deaf person and have him convicted of a crime that he never committed.

There is one instance on record that covers this particular problem. This case considers the ability of a sane, uneducated, deaf person to defend himself against a charge of murder. (There are other cases on record in this country that involved deaf persons who were tried on murder charges, such as the cases of *Chase* v. *State,* 1900, Texas Court of Criminal Appeals, 55 S.W., 833; and *Belcher* v. *Commonwealth,* 1915, 165 Kentucky 649, 177 S.W. 455; but these cases dealt only with the question of sanity or insanity. The question of sanity, of course, is entirely separate from the question of ability to stand trial due to deafness, lack of education, and inability to communicate. The two matters are different and should not be confused.)

The one case that directly applies to this problem is the case of *State* v. *William Harris,* 1860, 53, N. Car., 136 to 144, which was heard before the Supreme Court of the State of North Carolina. The court held that an uneducated deaf person accused of murder did not have the capacity to stand trial and therefore could not be tried.

The court said:

> We have stated these cases (from England) with more than usual particularity, because they set forth clearly, the true grounds upon which a deaf-and-dumb prisoner, whose faculties have not been improved by the arts of education, and who, in consequence therefore, cannot be made to understand the nature and incidents of a trial, ought not to be compelled to go through, what must be to him, the senseless forms of a trial. Whether arising from physical defect or mental disorder, he must, under such circumstances, be deemed "not sane," and of course, according to the great authority of Lord Hale, he ought not be tried * * * .
>
> (At p. 143.)
>
> (To the same effect, see the English cases of *Rex.* v. *Dyson,* 2 Levin's Crim. Cas. 64 and *Rex.* v. *Britchard,* 7 Car. & Payne 303.)

The conclusions that can be drawn from the above material are that if it is possible to communicate with a deaf person, then he can be tried for a criminal offense. The deafness of the person is one factor to be considered in determining whether the person is insane. If the deaf person cannot be communicated with in any manner, then he cannot be placed on trial since he would be unable to defend himself. In this last situation, it is difficult to see what could be done to him. If he is sane and merely uneducated, then he could not lawfully be placed in a mental institution. It appears that he would have to be set free. But this is not a workable solution since this would be the same as giving such a person a license to commit any crime that he wishes.

This appears to be one of the unsolved problems of the law.

SECTION 31

Interpreters in Criminal Cases

Previously discussed in this book have been the ability in the language of signs needed by an interpreter; the method of proving the interpreter's ability; who can act as an interpreter; the necessity of having the interpreter sworn under oath; methods and problems of interpreting; and objections to errors in interpreting. All of these matters will be involved in criminal cases as well as in other types of cases.

However, the use of interpreters in criminal cases has special importance in view of the constitutional principle that a person who is accused of a criminal offense has the right to be confronted by the persons who are to testify against him. The right of confrontation has always been construed to mean that the accused person has a right to hear the testimony of the witnesses against him. For example, when a defendant with normal hearing was required to sit so far away from the witness box that he could not hear the testimony, it was held to be a violation of his constitutional rights see *State* v. *Weldon*, 91 S. C. 29, 74 S.E. 43; *State* v. *Mannion*, 19 Utah 505, 57 P. 542. Likewise, when the defendant knew only the Spanish language and the testimony was in English, it was held that he was entitled to an interpretation of the testimony see *Garcia* v. *State*, 151 Tex. Crim. 593, 210 S.W. 2d 574.

In the same way it has been held that a defendant who is deaf is entitled to have the testimony against him translated for his benefit. In the case of *Terry* v. *State*, 21 Ala. App. 100, 105 So. 386, the Appellate Court of Alabama said:

> One of the principal questions presented calls for a construction of section 6 (Bill of Rights) of the Constitution of Alabama, 1901. This section provides, among other things, that in all criminal prosecutions the accused has a right to be heard by himself and counsel, to demand the nature and cause of the accusation, and to be confronted by the witnesses against him; also to testify in his own behalf if he elects to do so; nor shall he by deprived of life, liberty, or property except by due process of law, etc.
>
> This defendant was charged with the offense of murder in the first degree. He was a deaf-mute and had been so from his birth. Not being able to speak or hear, the court was requested to appoint an interpreter so that defendant might be informed as to the nature and

> cause of the accusation against him, and also as to the testimony of the witnesses who appeared against him.
>
> * * * * * * *
>
> In construing this constitutional provision it needs no discussion in deciding that all this must be done in a manner by which the accused can know the nature and cause of the accusation he is called upon to answer, and all necessary means must be provided to this end. It must also be provided, and the law so contemplates, that the accused must not only be confronted by the witnesses against him, but he must be accorded all necessary means to know and understand the testimony given by said witnesses, and must be placed in a condition where he can make his plea, rebut such testimony, and give his own version of the transaction upon which the accusation is based. This the fundamental law accords, and for this the law must provide. These humane provisions must not, and cannot, be dependent upon the ability, financial or otherwise, of the accused, as here appears. The constitutional right, supra, would be meaningless and a vain and useless provision unless the testimony of the witnesses against him could be understood by the accused. Mere confrontation of the witnesses would be useless, bordering upon the farcical, if the accused could not hear or understand their testimony. So, also, as to the nature and cause of the accusation. In the absence of an interpreter it would be a physical impossibility for the accused, a deaf-mute, to know or to understand the nature and cause of the accusation against him, and, as here, he could only stand by helplessly, take his medicine, or whatever may be coming to him, without knowing or understanding, and all this in the teeth of the mandatory constitutional rights which apply to an unfortunate afflicted deaf-mute, just as it does to every person accused of a violation of the criminal law. In other words the physical infirmity of this appellant can in no sense lessen his rights under the Constitution, and, in the proper administration of its laws, this great and sovereign State must and will accord the means by which its citizens, humble and afflicted though they may be, shall receive all the rights, benefits, and privileges which the Constitution, laws, regulations, and rules of practice provide. * * *
>
> It being conceded in open court that this appellant is a deaf-mute, we hold that the court erred in not providing necessary means for communicating to him the nature and cause of the accusation, and also the testimony of the witnesses against him in order to insure him a full and fair exercise of his legal rights above referred to.

Similarly, in the case of *Mothershead* v. *King*, 112 F. 2d 1104, a deaf man brought a petition in the Federal courts complaining that 10 years previously, at the time of his criminal trial, he had pleaded guilty to the charge against him without knowing the nature of the charge, due to the lack of an interpreter and the lack of an attorney to defend him. The deaf man claimed that he had never waived his right to an attorney and that due to the lack of an interpreter, he was not able to understand what was being done to him.

The Federal court held that if this was true he was entitled to relief by the courts, even though a long period had elapsed since the time of the trial. This is a very important case and a very important principle of law which has wide application to criminal prosecutions against the deaf.

The same rule was set forth by the Supreme Court of Georgia in the case of *Ralph* v. *State,* 124 Ga. 81, 52 S.E. 298, in which the court said:

> The constitutional right of one accused of an offense against the laws of this State to be confronted with the witnesses contemplates that they shall be examined in his presence and be subject to cross-examination by him. Where a defendant is deaf and cannot hear the evidence of the witnesses for the State, the presiding judge should permit some reasonable mode of having their evidence communicated to him.

A deaf person has a constitutional right to have an interpreter at his criminal trial, but this constitutional right can be waived by the deaf person. It has been held that where a deaf person did not request such an interpreter at the time of his trial he was deemed to have waived it and he could not later complain about the absence of such an interpreter. See *Field* v. *State,* 155 Tex. Crim. 137, 232 S.W. 2d 717 (assault with intent to murder). In the case of *Felts* v. *Murphy,* 201 U.S. 123, it was held that where the deaf man accused of murder had failed to request an interpreter at his trial in the State court, he could raise this issue on an appeal in the Federal courts.

The fact that an interpreter must be furnished does not mean that the testimony of the witnesses must be written down and submitted to the deaf defendant in writing (*Ralph* v. *State,* 124 Ga. 81, 52 S.E. 298). It is sufficient that the testimony is interpreted in some other reasonable manner.

It is important that a deaf person be given an opportunity to secure an interpreter and a lawyer, not only to comply with the technical legal requirements, but also so that he himself will realize that he is being given a fair chance to defend himself. If this is not done, the deaf person may feel that he is being "railroaded" into jail and this may lead to further acts of violence when he is finally released. For example, in the case of *Singer* v. *Florida,* 109 S. 2d 7, a deaf man was convicted of a minor trespassing charge without being given an attorney to defend him. In retaliation for this, he murdered the wife of the prosecutor as soon as he was released from jail on the trespassing charge.

Section 24–108 of the Tennessee statutes provides that whenever a deaf person is a party to a court action, a qualified interpreter shall be furnished as part of the costs of the case. Section 1278, title 22, of the Oklahoma statutes provides that in all criminal actions where the accused is a deaf-mute he shall have an interpreter furnished at the cost of the court. A similar provision was enacted in Illinois in 1963. Such provisions are extremely important and every State should have such a law.

SECTION 32

Specific Criminal Offenses Involving the Deaf

There are a number of particular criminal offenses in which deafness often creates special problems.

A crime is generally stated to be the performance of some action which is prohibited by law, with a deliberate intent to commit that act. Whether or not a crime has been committed may depend entirely upon the intent with which an action is performed. In many cases the question of intent depends upon knowledge and consent. The following areas are those where deafness often creates misunderstandings which may affect the existence of the required knowledge, consent or intent.

Rape Cases

Rape is generally defined as the act of having sexual intercourse with a woman by force or threats and against her will. One of the essential elements of the crime is that the woman does not consent to the act.

If a woman consents to the act and is of legal age, the crime of rape does not exist. If the woman is below legal age, under the law in most States, she is not capable of giving consent. In many States illicit sexual intercourse between persons of legal age is not illegal at all unless it is done in an improper place or in an improper manner.

The element of consent is therefor vitally important, and this is something that may be a very questionable matter. It frequently happens that a woman consents to having illicit intercourse and later regrets her decision. She may have been observed while in the act, she may have become pregnant or, for one reason or another, she may later regret the consequences of her action. In this situation it is very common for a woman to falsely claim that the act was performed without her consent and that she was raped.

When a deaf person is involved in an accusation of rape, many special and unusual problems arise in trying to determine the actual intent of the parties. In one typical case a deaf woman lived in an apartment building and was friendly with a man of normal hearing who lived in the next apartment. One night the man came to her apartment and had sexual intercourse with her. The following morning she swore out a warrant for his arrest on a charge of rape. At the trial it was proven that her clothing was not torn, that the neighbors had not heard her scream, and that she had delayed going to the police station for about 8 hours following the act.

She was asked why her clothing was not torn, and she explained that was because she had been too frightened by the man's threats to resist him. This brought up the question of how she could have heard or understood any threats by him since she could not hear him speak and he did not know the language of signs. She explained that he had made gestures with his hands which she thought were clearly menacing. She was then asked to show the court exactly what gestures he had made. She made a motion of a knife cutting a throat. The man denied making any such gesture and said that, on the contrary, he had explained to the woman by gestures that he wished to have sexual intercourse with her and that since she had not opposed his action in any manner, he had assumed that she agreed to it.

The gestures that were demonstrated in court by the woman and the man were rather ambiguous and inconclusive. They might reasonably have been misunderstood by either of the parties.

The woman was then asked why she had delayed reporting the matter to the police. She explained that she was very reluctant to do so because she feared it would be very difficult or impossible for her to communicate with them; but that after considering the matter for several hours, she had finally decided that she would have to do so. She explained that she could not use the telephone to make an immediate complaint.

She was then asked why she did not scream when the man laid his hands upon her. She replied that she was mute and unable to speak and therefore could not scream. But it was proven that although she could not speak intelligibly, there was no physical defect in her speech mechanisms, and that she was capable of screaming. She then stated that although she might be capable of screaming, she had not used her voice for many years and she had a permanently fixed habit of being silent, and this explained why she had not screamed.

As can be seen, the woman's deafness raised many unusual problems that would not be present in an ordinary case of this kind.

Deafness frequently causes misunderstandings in cases like this.

For example in the case of *State* v. *Rohn*, 140 Iowa 640, 119 N.W. 88, where a man was accused of the rape of a deaf woman, the court pointed out:

> He proposed intercourse, the meaning of which was not comprehended by her * * *

The same problems in regard to the presence or absence of consent also exist when the accused man is the one who is deaf. In one case a deaf man had sexual relations with a woman of normal hearing who worked with him in a factory. When he was arrested on the woman's accusation of rape, he stated that he had explained to the woman by unmistakable signs exactly what he desired, that he had paid her a sum of money which she accepted, and that she had made no resistance to his actions. The woman testified that she had not understood his signs, that she had accepted his money because she thought it was merely a gift that he was making to her, and that she had not screamed "because he couldn't hear it anyway."

Obviously such cases present extremely difficult problems for the court to solve. In order to determine the true facts, it is always necessary to have the assistance of an expert interpreter; and it may be advisable in such cases for the court to obtain advice from experts in the field of the deaf as to the capabilities of the deaf person. In the absence of such assistance, great miscarriages of justice may result. It is important to keep in mind in handling such cases that in some States the crime of rape is punishable by death, and that in every State it is punishable by long imprisonment.

It quite frequently happens that a deaf woman will accuse a man of the crime of rape simply because she does not understand the legal meaning of this term. In one case a man offered a deaf woman a sum of money if she would have sexual relations with him. She did this and then demanded the money, which he refused to give her. She went to the police and stated that the man had raped her, thinking that this refusal to pay her made the act of intercourse equivalent to rape. Due to difficulties in interpreting, the true situation was not discovered for some time, and it was then explained to her that if she had consented to the act of intercourse the fact that he had not paid her did not constitute rape.

Likewise, a deaf woman complained that a man had raped her many times over a long period of time. It was explained to her that the fact that she had not immediately reported the first offense to the police and had continued to see the same man on numerous other occasions created a strong implication that she had not been raped but had consented to what was done.

Such cases should always be investigated very carefully since misunderstandings and false accusations are common. See *Skaggs* v. *State*, 108 Ind. 53, 8 N.E. 695, and *People* v. *Weston*, 236 Ill. 104, 86 N.E. 188.

Larceny Cases

Larceny is generally defined as the taking of property belonging to someone else with the intent of depriving the owner of his property, and of keeping the property for the use of the person who takes it. The intent with which the property is taken determines whether or not a crime has been committed.

In one case a deaf man was a frequent patron of a certain drugstore. One evening he went to this drugstore to buy an article that cost about $2.00. On going to the cashier's counter to pay for his purchase, he found that he did not have enough money with him to pay for it. He asked the cashier, "Can I pay for this tomorrow?" The deaf man stated that the clerk nodded her head to says "Yes". The deaf man then put the article into his pocket and left the store. He was immediately arrested for shoplifting by a private detective who was standing outside the front door of the store. The clerk stated that the deaf man had said something to her as he left the store, but that she had not been able to understand his defective speech. She said that she was not aware that he was taking something from the store without paying for it and that she would not have permitted him to do so if she had known about it.

At the trial, the clerk admitted that she might have nodded her head when the deaf man spoke to her, but she said that if she had done so, she had done this merely as a matter of courtesy. The judge dismissed the case but warned the deaf man if a similar case should be brought up against him in the future he would be sentenced to 6 months in the county jail.

In another case a deaf woman worked as a cleaning woman for various housewives. One of these housewives had a jar containing money in her pantry and she told the deaf woman that she should help herself to this money if she needed small sums for her lunch or carfare. After a few weeks had gone by the housewife noticed that rather large sums of money were being taken from the jar and told the deaf woman not to take any more. Money continued to disappear and the deaf woman was arrested for stealing. At her trial the deaf woman testified that she had not heard the housewife tell her not to take any more money, and that she thought that she still had permission to do this.

The question here was whether or not the deaf woman had heard the housewife tell her not to take any more money. The trial court held that the State was required to prove its case beyond a reasonable doubt, and that since there was some doubt about the matter, the deaf woman was found not guilty.

In cases like this, where it is the first time that the deaf person has been involved in a difficulty of this nature, the courts seem to be inclined to give the benefit of the doubt to the defendant. Where a deaf person was involved in misunderstandings of this kind repeatedly, the judge would probably conclude that necessary wrongful intent did exist, and would find him guilty of larceny.

Failure To Yield Right of Way to Emergency Vehicle

Deaf persons are sometimes involved in collisions with emergency vehicles such as fire trucks, police cars, and ambulances which are going through red lights or are driving on the wrong side of the street. The deaf person may not have heard the siren and may not have been able to see the flashing red light in time to avoid a collision. In this situation the deaf person is likely to be arrested for failure to yield right-of-way to an emergency vehicle or some similar charge may be placed against him.

It is a basic principle of law that in order for an act to constitute a crime, the action must either be voluntary, intentional, or negligent on the part of the person who performs it. Pure accidents which occur without the fault of any person are not criminal.

> * * * a penal law will not be valid where it makes criminal an act which the utmost care and circumspection would not enable one to avoid * * *
> (22 C.J.S. 87, Criminal Law, Sec. 30.)
>
> An act which would otherwise constitute a crime may be justified or excused if done under necessity.
> (C.J.S. 115, Criminal Law, Sec. 49.)

In the case of *People* v. *Connors*, 253 Ill. 266, 97 N.E. 643, the Illinois Supreme Court said:

> In the commission of every crime there must be a union or joint operation of act and intention or criminal negligence.
> (At p. 648.)

Likewise, in the case of *Nicholson* v. *People*, 29 Ill. App. 57, the Illinois Appellate Court stated:

> * * * the general principle that the commission of an act which is not malum in se, in blameless ignorance of a fact which makes it unlawful, is not criminal * * *
> (At p. 67.)

For example, where an automobile accident is caused solely by some mechanical failure in the automobile, the driver cannot be convicted of any criminal offense. See *Sinclair* v. *United States*, 265 F. 991; *Commonwealth* v. *Tackett*, 299 Ky. 731, 187 S.W. 2d 297; *Wilson* v. *State*, 148 Tex. Cr. 61, 134 S.W. 2d 838. Other cases involving the same basic principle are *Florke* v. *Peterson*, 245 Iowa 1031, 65 N.W. 2d 372; *State* v. *Willers*, 75 S.D. 356, 46 N.W. 2d 810.

When an automobile accident is caused solely by the deafness of the driver, he cannot be held criminally liable because the fact that he is physically handicapped is not criminal in itself, and it cannot be made criminal by the fact that an accident occurs.

Deaf drivers in this situation should generally plead not guilty to a charge of this kind and bring these legal authorities to the attention of the court. It should be kept in mind that where a driver pleads guilty to a traffic charge, the fact that he pleaded guilty may be used against him in any civil litigation that may arise out of the accident. Legal interpretations may vary in this regard, however.

Failure To Obey a Police Officer

It occasionally happens that a police officer who is directing traffic at a street corner will give an order to a deaf driver which he does not hear. When he fails to obey the order, the policeman may then give him a traffic ticket for failure to obey a police order, or some similar charge. In accordance with the legal principles previously discussed, such a charge should not be upheld if the deaf person actually did not hear the order and did not know what it was. See *Hamblet* v. *Mutual Union Insurance Co.*, 120 Wash. 31, 206 P. 836.

Crimes Against the Deaf

There are a few State statutes which specifically provide that certain actions performed against the deaf constitute crimes:

Virginia:

Title 18.1, section 44, of the Virginia revised statutes provides that any person carnally knowing any female who is an inmate or pupil of an institution for the deaf and dumb shall, in the discretion of the court, be punished with death, or confinement for life, or for any term not less than 5 years.

This statutory provision is both unnecessary and possibly harmful. It is unnecessary because the usual criminal law against the seduction of minor children is adequate to cover the problem. The statute could be harmful because it is much too broad. It might be applied to a girl who attended a State school for the deaf who was married or engaged to be married.

Georgia:

Section 23–2307 of the Georgia code makes it a crime for a migratory company to leave a deaf pauper in the State without means of support. support.

Wisconsin:

Chapter 940.29 of the Wisconsin statutes makes it a crime for anyone to abuse, neglect, or ill-treat any pupil in the State school for the deaf. Violations are punishable by imprisonment of up to 1 year.

Sale of Hearing Aids

In the State of Oklahoma there is a law which prohibits anyone from advertising the price of any service, commodity, or material of a type which requires a prescription or examination from a licensed physician. Other States may have similar laws on this subject. In Oklahoma there is a specific exemption of hearing aids from the application of this law. This tends to indicate that the Oklahoma legislature did not consider hearing aids to be a medical item in the same way that eyeglasses, braces, or other such items are covered by the act. Or it may be that there were special reasons why hearing aids were excluded from the application of this law (see section 736.1, title 59, Oklahoma Revised Statutes).

SECTION 33

Posing as a Deaf Person

It is not unusual for a person with normal hearing to pose as being deaf for one reason or another. It is sometimes quite difficult for one who does not have experience in this field to determine whether or not the deafness is genuine. The Chicago Daily News of August 24, 1957, reported the case of a "deaf-mute" who was inducted into the U.S. Army and reported to have normal hearing (over his violent protests) by Army doctors who actually were unable to ascertain whether or not he was deaf. Experts in the field of deafness are able to detect deafness and to expose those who are pretending by the use of the following methods:

If a person claims to be deaf in one ear only, a record is played through an earphone in one ear and simultaneously a different record is played into an earphone in the other ear. A person who is really deaf in one ear only will be able to understand what has been played through one earphone. But a person who can hear through both ears will be confused by the combination of two different records.

If a person claims to be partially deaf in either or both ears, this can be easily checked by means of an audiogram test. A person who is not faking will have the same result each time he is tested, but one who pretends to be deafened will show different results on each test since he cannot successfully make his answers the same on each test without knowing the settings of the machine. In the same way, if an audiogram is turned on loudly so that the person can hear it and then it is gradually turned down until he says that he cannot hear it any longer, a note can then be made of this point. The machine can then gradually be turned louder again and the person asked to state the point at which he can hear it. A deafened person will state the same point for his hearing threshold both when the sound is lowered and when it is raised. But a person who is pretending to be deaf will generally state different points in the two tests, since he cannot determine a threshold point that does not actually exist.

If a person claims to be totally deaf, he can be given a book to read aloud while a record is played through earphones in his ears. If he is actually deaf, it will make no difference whether the record is on or off. His reading voice will be the same in either case. But if he is merely pretending to be deaf, the playing of the record in his ears will change the quality of his speaking voice since the sound from the earphones will drown out the sound of his own voice in his ears. Or the record that is played in the earphones can be a recording of his own reading of that book, played at a slightly different rate of speed. If he is able to hear this in the earphones it will completely confuse him and make it impossible for him to read the book.

Where a person claims to be an illiterate who is totally deaf and unable to speak, the foregoing tests may not be possible. In this event, the person should be asked the following questions in the language of signs:

What is your your name?
Where do you live?
Where do you work?
Where did you go to school?
How old were you when you lost your hearing?
What clubs of deaf persons do you know?
What deaf people do you know?

The significance of these questions is as follows: If he states that he lost his hearing at an early age but that he went to an ordinary grammar school (not to a special school for the deaf), this is highly improbable since persons who lose their hearing at an early age are almost always sent to special schools for the deaf. Any person who has gone to such a special school will name and locate it.

If he states his address, it is easy to check with his landlord or neighbors to see if he is actually deaf. Likewise, if he states where he works, it is easy to call his employer to see if he is deaf. If he is really deaf he should know where clubs of the deaf are located, particularly if he has traveled considerably. He should also be able to give the names of other deaf persons who will be able to confirm that he is deaf.

After a few minutes of questioning an expert in this field will generally be able to tell whether a person has actually been deaf from childhood, or is just pretending to have such a condition. Those who are deaf from childhood have many subtle characteristics which others do not have. Under expert examination, it is an extremely difficult thing to carry out such a deception successfully.

There is a basic difference between a person who is actually deaf and one who is pretending to be deaf. A person who is pretending has to make a great effort to ignore what he hears. He has to concentrate on cutting off what takes place about him. He therefore generally looks down at the ground, or he turns his eyes to some object and tries to ignore everything else in the room. He often overdoes it and ignores not only what he hears but also what he sees. For example, if someone waves to him, he is likely to ignore that too. The person who is pretending to be deaf usually shows by every action and motion that he is trying not to respond to what goes on around him.

A person who is deaf acts in exactly the opposite manner. He actually is cut off from the world, and he tries to overcome that barrier as much as possible. He constantly watches what is going on around him. He looks from one person to another, trying to catch some clue from their facial expressions as to what is being said. He does not ignore the world. On the contrary, he tries frantically to keep in touch as much as he can, whereas a person pretending to be deaf has to work very hard at ignoring all about him. If this basic difference is kept in mind, it is generally quite easy to distinguish between the two types of persons.

The following example, which is a transcription from an actual case, shows the technique that can be used to expose someone who is pretending to be deaf.

The examiner was asked to determine whether or not a man held in police custody was deaf or mentally ill. This man did not speak and did not reply to any questions. He indicated by crude signs that he was deaf and mute and that he could not speak, read, or write.

The examination was as follows:

Examiner (verbally)—"What is your name?"

Subject (no answer; looks at the floor).

Examiner (in signs)—"What is your name?"

Subject (no answer; looks at the floor).

Examiner (verbally)—"You are not deaf. You can hear me. I can tell that you are not deaf. Do you want to know how I can tell?"

Subject (no answer; looks at the floor).

Examiner—"The way I can tell that you are not deaf is by the way you are acting. You are looking at the floor because you are trying to concentrate on not listening to me. A deaf person would act very differently. A deaf person would not look at the floor the way you are doing. A deaf person would be looking at me, trying to figure out what I am saying."

Subject (looks up at examiner).

Examiner—"You see, you heard what I said. That's why you just looked up at me."

Subject (immediately looks down at the floor again).

Examiner—"You see. Now you're looking down again. Every time I say something you react to it. Now, we can see that you heard me twice. You can hear a little bit can't you?"

Subject—"Maybe I can hear a little."

Examiner—"You just spoke; so you can speak, too, can't you?"

Subject (no answer).

Examiner—"You just said something. We know you can speak. The only reason you would refuse to speak would be if you were mentally ill. Are you mentally ill?"

Subject—"No I'm not. It's not my fault. Everybody is picking on me. I'm sick. I need help. Nobody will help me."

Police Official—"That's sufficient. He certainly is not deaf."

Some State have enacted laws specifically forbidding anyone from posing as a deaf person.

Indiana:

Section 10–2111 of the Indiana revised statutes penalizes the solicitation of money, etc., by false representation of deafness or other physical defect, by imprisonment from 1 to 6 months and a fine of from $10 to $200, or both.

Maine:

Section 17–1608 of the Maine revised statutes provides that whoever engages in soliciting, procuring, or attempting to solicit or procure money or other things of value, by falsely pretending or representing himself to be deaf, dumb, blind, crippled, or physically defective, shall be punished by imprisonment for not more than 90 days.

Missouri:

§ *560.156 Stealing, deaf pretending*—Makes it unlawful for any person to intentionally steal the property of another, either without his consent or by means of deceit, by pretending deafness.

New Mexico:

§ *40–21–13 Solicitation of Charity Under False Representation of Deafness*—Penalizes solicitation of money, etc., on false representation of deafness or other physical defect, by a fine of not exceeding $100, or imprisonment in the county jail for a period not exceeding 6 months, or both.

New York:

Penal Code § *939 Solicitation of Charity Under False Representation of Deafness*—Provides that any person who shall willfully and intentionally fraudulently represent himself or herself to be a deaf-and-dumb person in order to collect, receive, or otherwise obtain moneys, food, clothing, or anything of value whatsoever, is guilty of a misdemeanor.

North Carolina:

§ *14–113 Obtaining Money by False Representation of Physical Defect*—Makes it unlawful for any person to falsely represent himself or herself in any manner whatsoever as blind, deaf, dumb, or crippled or otherwise physically defective for the purpose of obtaining money or other things of value, or of making sales of any character of personal property. Any person so falsely representing himself or herself as blind, deaf, dumb, crippled, or otherwise physically defective, and securing aid or assistance on account of such representation, shall be deemed guilty of a misdemeanor.

North Dakota:

Chapter 12–38–08 False Statement of Physical Defect—Misdemeanor—Every person who falsely represents himself to be deaf and secures aid or assistance on account of such representation is guilty of a misdemeanor punishable by imprisonment in the county jail for not less than 1 month nor more than 6 months, or by a fine of not less than $10 nor more than $100, or by both.

South Dakota:

§ *13.4205 Misrepresentation Physical Condition to Secure Charity*—Makes a person who misrepresents his physical condition to secure charity guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $100, or by imprisonment in county jail not exceeding 30 days, or both.

Washington:

§ *9.87.020 Crime and Punishment*—Makes it unlawful for any person to falsely represent himself as deaf or dumb for the purpose of obtaining money or other things of value, or for making sales of personal property. Violators are guilty of a misdemeanor.

Wisconsin:

Chapter 129.17—No person shall engage in the business of peddling finger alphabet cards or cards stating that the person is deaf or to masquerade as a deaf person. Provides penalty of imprisonment in county jail for not more than 90 days or a fine of not less than $25 nor more than $100.

In those States where there is no such law in force, the general criminal laws forbidding fraud or false pretenses may apply to the situation. Such statutes have a useful purpose and their enactment should be encouraged. In many cases the general criminal law against begging would apply.

SECTION 34

Deaf Peddlers

A number of deaf persons customarily travel around the country working as peddlers. They generally have small cards with the manual alphabet printed on one side of the card and some kind of a selling message on the other side.

A few actual samples were worded as follows:

I AM A — **(Picture of U.S.**
DEAF — **flag printed here.)**
MUTE

Forgive me for bothering you.
WILL YOU?
I am selling this card to see my way through.
Will you kindly buy one?
Pay any price you wish.
THANK YOU

……

Pardon me
I AM A DEAF MUTE
I sell this card for a living
PAY WHAT YOU WISH
Thank you
(turn over)
(Manual alphabet on reverse side)

……

Let's be friends
DEAF MUTE'S ALPHABET
This printed card is for the purpose of helping me, a DEAF MUTE, in making a living—
ANY PRICE you can pay will be appreciated.
THANK YOU
(over)
(Manual alphabet on reverse side)

Some deaf persons do not use such a printed card. Instead they use a piece of paper with a message written on it that simply asks for a donation. Others sell small articles of merchandise, such as cheap ballpoint pens, band-aids, key chains, booklets, etc.

The general method of operation is that the deaf person goes into some public place such as a park, railroad waiting room, tavern, bowling alley, or restaurant and hands out his cards to as many people as will take them. If the peddler does not receive an immediate cash donation he takes back his card. If he is given some money the peddler leaves the card.

When this practice of peddling is followed as a full time occupation, a peddler can easily come into contact with over 1,000 people in a day. A comparatively small number of peddlers over a period of a few years will eventually come into contact with a very large number of people. They therefore make an impression on the general public that is immensely greater than their numbers would indicate.

It is obvious that these peddlers are exploiting the sympathy of the public. The impression that they make on many people is that the deaf, as a class, are unable to work as other people do, and that they are therefore compelled to beg for a living. This is extremely harmful to the deaf as a group. It gives the impression that they are not useful and capable members of our society. For this reason, deaf peddlers are commonly held in contempt by the vast majority of all other deaf people. Reputable organizations of the deaf have publicly disavowed this activity and have attempted to police the same among their members.

The practice of peddling is not only harmful to the deaf as a group but it is also frequently harmful to those who do the peddling. Such peddlers generally travel from city to city seeking areas which have not already been covered by other peddlers. They have heavy travel expenses, are obliged to live in hotels, and have other extraordinary expenses. Peddlers are seldom able to save any of the money that they make and generally live from hand to mouth. Moreover this type of work is demoralizing. There have been many cases involving alcoholism, larceny, prostitution, crimes of violence, and divorce among them, and their children may turn out to be juvenile delinquents.

Among the peddlers themselves, those who are dominant often exploit the weaker ones. An older and more experinced deaf peddler may force one of limited mentality, education, and experience to work for him. He may promise his "employee" big money if he will work for him. He may have such a person sign a "contract" in which he agrees to work for him for several years. Whatever money the "employee" makes the "employer" will take away under the "terms of the contract." The "employer" may terrorize his "employee" with threats that if he breaks the contract he will have him imprisoned. The process of intimidation and exploitation may be accompanied by physical beatings, sexual seduction, or whatever is necessary to keep the "employee" under control. This situation is not unusual among deaf peddlers.

If the "employee" breaks away from the "employer," the latter often goes to the police and has the "employee" arrested for assault or for some other trumped up charge. When the case comes up in court, the "employer" testifies that the "employee" was guilty of some crime. Since the "employee" may be incapable of defending himself in court, he may be imprisoned on false testimony.

When the "employee" is later released from jail, the "employer" says to him, "The judge put you in jail because you broke your contract with me. That will teach you a lesson. You must stay with me and work for me or the judge will put you in jail if you try to break your contract with me."

This entire process is a common scheme to keep a deaf person of low mentality in a state of involuntary servitude in violation of the United States Constitution. Obviously the entire process is illegal and criminal.

To those who work in the field of rehabilitation and training of the deaf, nothing is more discouraging than to see a young deaf person, who has been carefully trained in some useful trade, induced to enter the practice of peddling by some older peddler with promises of easy money. There have been many cases of older deaf peddlers attempting to persuade young students at schools for the deaf to leave school and work as assistants to such peddlers. The ultimate consequences of this practice can only be described as tragic.

The evils of such peddling are so pronounced that many efforts have been made to reduce or eliminate the practice. These efforts have generally taken one of the following forms:

1. Deaf peddlers may be arrested as vagrants under the general vagrancy laws.
2. They may be prosecuted for not having a peddler's license that may be required by certain cities.
3. They may be made subject to legal action for not paying State sales taxes on their sales.
4. They may be prosecuted as beggars.
5. They may be reported to the Internal Revenue Service for failure to pay Federal income taxes on their earnings.
6. Special State laws may be enacted to make the practice of peddling by the deaf a specific crime.

These attempts to discourage the practice of peddling by the deaf have frequently been unsuccessful for the following reasons:

When a policeman is called because a complaint has been made against a deaf peddler, the policeman often sympathizes with the peddler on account of his handicap and refuses to make an arrest. He merely tells the peddler to move on. If the policeman is compelled to make an arrest and the deaf peddler is brought before a local court, the judge may likewise sympathize with him, impose only a small fine, and tell him to get out of town. To make the peddler move on does not really solve the problem since it passes the problem on to the next city to which he goes.

Serious attempts to take legal action often run into legal complications for the following reasons:

A deaf peddler usually has some money and he is apparently following an occupation; therefore he is generally not within the true legal definition of a vagrant. It should also be noted that many vagrancy laws are so broad and indefinite as to be unconstitutional.

If the deaf person is charging money for his cards, he is selling not begging. Of course, the statement "pay what you wish" is subject to different interpretations, but if some payment is required this is not begging in the technical sense.

The fact that there is no fixed price for the goods that the deaf person sells is not significant. Many things are sold for indefinite prices that are negotiated between the parties to the transaction.

The lack of a peddler's license generally makes the person subject to only a small fine. The application of State sales tax laws usually takes too long to be effective and often the State tax department is not interested in the matter. The Federal income tax department may be interested in the activities of peddlers, but here also the application of the tax laws comes too late to be of much benefit.

State or city laws directed specifically at deaf peddlers are often unconstitutional in their application to the activities of peddlers. The occupation of selling is a fundamental form of business activity. It is highly doubtful that the deaf can be discriminated against and prohibited from taking part in such a fundamental activity. The prohibition of a lawful business is generally unconstitutional. On this subject see the following cases: *Real Silk Hosiery Co.* v. *Bellingham,* 1 Fed. 2d 934; *State* v. *Wilson,* 249 Ill. 195, 94 N.W. 141; *Adams* v. *Tanner,* 244 U.S. 590; *Ralph* v. *City of Wenatchee,* 209 P. 2d 270. *Garden Spot Market* v. *Byrne,* Mont. Sup. Ct., 1–24–63. It should be noted that the United States Code, Title 18, Section 242, makes it a felony for anyone under cover of any law or ordinance to deprive any citizen of his constitutional rights or privileges.

It should also be noted that a card showing the deaf manual alphabet is not merely merchandise. It is a most important type of writing. It makes it possible for persons with this knowledge to communicate with the deaf. The sale of such cards probably cannot be made a crime without violating the first amendment of the United States Constitution, which guarantees the right of free speech. The teaching of a language cannot be made a crime in this country.

Police officers are, therefore, often reluctant to make arrests under laws or ordinances prohibiting peddling since a police official or other person who makes an arrest under a law which is later held to be unconstitutional can be personally held liable for general and specific damages (*Scott* v. *Donald,* 165 U.S. 58, U.S. Code, Title 43, Section 1983).

Of course, in actual practice a deaf peddler is not likely to have proper legal counsel available to him in a strange city. When a case of this nature comes up in a local court, the judge may not consider the constitutionality of a law unless the matter is brought to his attention. Therefore, in actual practice, such laws may have a substantial effect. See "Vagrancy and Arrest on Suspicion" by William O. Douglas, 1960, The Yale Law Journal; "Police Controls Over Citizen Use of Public Streets" by Jim Thompson, 1959, Journal of Criminal Law, page 562; *Talley* v. *California,* 1960, 4 L. Ed. 2d 559.

Statutes of this kind are as follows:

Texas:

Section 1137n of the Texas Penal Code provides that it is a misdemeanor punishable by imprisonment in a county jail for not more than 60 days and/or a fine of not less than $10 nor more than $50 for any person to peddle or use a finger alphabet card or other printed matter stating, in effect, that the person is deaf and/or mute in a manner calculated to play upon the sympathy of another in the solicitation of a contribution or donation.

Wisconsin:

Section 129.17 of the Wisconsin revised statutes provides that no person shall engage in the business of peddling alphabet cards, or cards stating that the person is deaf; or to masquerade as a deaf person. The statute provides a penalty of imprisonment in the county jail for not more than 90 days or a fine of not less than $25 nor more than $100.

However, on the other hand the State of Pennsylvania has a statute which would favor the practice of peddling.

Title 18, sections 4617 to 4618 of the Pennsylvania revised statutes *exempts* any deaf-and-dumb person from the penalty of begging, and exempts them from the misdemeanor of being a tramp, or entering the dwelling of another without his permission, or kindling a fire on the land of another, etc.

It is possible that the only true solution to this problem lies in improving the occupational opportunities of the deaf to a point where they will not find peddling necessary or attractive. Until this ultimate goal is achieved, a serious effort should be made by those who teach deaf students, or who work with the deaf in other ways, to emphasize the great evils of this practice.

The fact that deaf peddlers find it so easy to operate and to get money from the public is clear proof that the public has great sympathy for the deaf and is willing to help them. But this charity is misplaced. It is a great pity that this spirit of sympathy and helpfulness cannot be turned to better use than to support peddlers.

SECTION 35

Insanity Proceedings and Guardianships for the Deaf

When a person is committed against his will to a mental institution, the result is often very much the same as if he had been sentenced to imprisonment in jail for 1 year to life. Indeed, the situation is often worse, since the conditions in some mental hospitals are worse than in some penitentiaries. It is obvious that a person should never be committed to a mental institution against his will unless that person is actually mentally ill, and that the strictest safeguards should be exercised to make sure that no one is wrongfully sent to such an institution.

From a reading of the statutes in force in many States, it might be concluded that the present legal safeguards are adequate and that there is no danger of anyone being wrongfully committed to a mental institution. For example, the general procedure in many States is that before a person can be committed against his will the following conditions must first be fulfilled.

1. A complaint must be signed by a relative, friend, policeman or physician stating that he has observed the person's conduct and that he believes that the person is mentally ill.
2. The person must be examined by a psychiatrist. If he finds that the person is mentally ill, he signs a certificate to that effect.
3. The person must be given a court hearing at which he may request a jury trial, and at which he will have the right to speak in his own defense, to produce witnesses in his favor, and to be represented by an attorney.

Such procedures would be adequate in most cases if they were fully observed. However, in actual practice, these legal safeguards may be circumvented or they may be entirely ignored.

A recent investigation of the operation of the Cook County, Ill., Mental Health Clinic showed that persons were brought to the clinic by policemen under very vague charges. Each person would then be examined by a staff psychiatrist for approximately 2 or 3 minutes. It was reported that the psychiatrists frequently conducted the examination in a hostile and sarcastic manner, and made findings of insanity on trivial grounds. The psychiatrist would then sign the complaint form as a physician and would then proceed to sign the commitment form as a psychiatrist, the same person signing both papers. The person might then be injected against his will with powerful drugs which made it impossible for him to speak or to think clearly. In this condition he would be brought into court and, not making the proper legal defense because of being drugged, he would be found insane in a routine and automatic manner, and committed to a mental institution. (The workings of the system are described in detail in the recent legal article: "The Illusion of Due Process in Commitment Proceedings" by L. Kutner, Northwestern University Law Review, October 1962.)

Attendants working at the Mental Health Clinic were instructed not to inform patients that they had a right to a jury trial and a right to be represented by a lawyer. In one instance a clinic social worker who informed a patient of his legal rights was immediately fired from her position (see articles in Chicago Daily News, July 25, and Oct. 9, 1962).

The workings of such a system upon persons who cannot speak English to defend themselves may be extremely tragic. The recent case of Mr. and Mrs. Duzynski was investigated in great detail by the Illinois Division of the Civil Liberties Union and received wide publicity. They described the facts as follows in their publications: Mr. and Mrs. Duzynski were emigrants from Poland and could not speak English. They had $300 in their apartment in Chicago. They found it was stolen and suspected the janitor of the building of taking it since he had the only other key to their apartment. They went to his apartment and accused him of the theft.

The janitor called the police and told them in English, which Mr. and Mrs. Duzynski could not understand, that Mr. and Mrs. Duzynski were insane. The police could not communicate with them since the police did not speak Polish. The policemen took them in handcuffs to the Cook County Mental Health Clinic. At the clinic they were unable to answer any questions in English. The psychiatrist who examined them made no effort to find someone who spoke Polish and simply ruled that they were insane. They were, likewise, unable to speak English at their court appearance and were therefore committed to the Chicago State Hospital. Six weeks later they were still there and still had no clear understanding of why they were confined. It appeared to them that they had been imprisoned in a concentration camp without any reason and that they would be kept there forever, which was, perhaps, not far from the truth. In a desperate attempt to secure freedom for his wife, Mr. Duzynski hanged himself. His death by suicide called the attention of the authorities to the situation and Mrs. Duzynski was released the following day.

It should not be supposed that this is an unusual case. A great many cases of the nature are collected in a law review article published in American Law Reports, volume 145, page 711.

It is apparent that Mr. and Mrs. Duzynski were wrongfully committed to a mental institution mainly because they could not speak English and no one made an effort to communicate with them in their own language. A great many deaf people are in exactly the same basic situation in not being able to speak well enough to make themselves understood.

The position of a deaf person may, in fact, be much worse than that of a person who does not speak English. At the time the deaf person is first taken into custody, any pens or pencils that he has may be taken from him; they could be used as weapons. Any paper he has may be taken away; it could be used to start a fire. His eyeglasses may be taken away; the glass could be used in a suicide attempt. His hearing aid, if he uses a bulky, old-fashioned one, may be taken away; the instrument might be considered heavy enough to use as a weapon. In many institutions literally everything is taken away from the inmates to be kept in protective custody. Without pencil and paper, the deaf person cannot write. Without eyeglasses, he may not be able to use whatever lipreading ability he may have. Without a hearing aid, he may be unable to use whatever hearing he may possess.

At the examination by the psychiatrist, if the deaf person attempts to speak, his imperfect speech is likely to be taken as a symptom of neurological damage. If he tries to use signs, the report may state that he acted hysterical. If he tries to write, his limited vocabulary and imperfect language may lead to the conclusion that he is disoriented. If he shows any sign of resentment at what is being done to him, he may be called violent and aggressive. If he does nothing at all, he may be called withdrawn and comatose. No matter what he does, the deaf person may be unable to escape being labeled insane.

It should be noted that a very common question used by psychiatrists to judge sanity is the question: "Do you hear voices or noises in your head?" A psychiatrist who uses this question may be unaware of the very common medical condition among deaf persons which is called tinnitus by hearing specialists. This results in a deaf person having the illusion of hearing bells, whistles, or other types of noises. A deaf person who suffers from tinnitus will probably answer such a question in the affirmative. The psychiatrist may then conclude that he has hallucinations, and this is the most serious sign of mental illness.

These problems also apply to a deaf person who is actually mentally ill and is committed to an institution, but who later recovers. He may experience extreme difficulty in attempting to let the authorities know that he has recovered in order to obtain his freedom.

These problems concerning the wrongful commitment of deaf persons are extremely serious. Statistical projections indicate that at the present rate of hospitalization, about 1 out of every 12 persons may spend a part of his life in a mental institution (see "The Mentally Disabled and the Law," by Lindman and McIntyre, University of Chicago Press, 1961). The problem is acute and it is growing. The deaf are very much in need of proper protection against mistaken commitments to mental institutions, and at present there is very little adequate protection.

Naturally, if the only unusual conduct observed by a person such as a psychiatrist is that the person being observed is deaf and does not speak, this does not in any way indicate that the person is mentally ill. In the case of *Challiner* v. *Smith,* 396 Ill. 106, 71 N.E. 2d 324, a deaf woman who refused to speak was ill in bed. Upon these facts, a witness proposed to express his opinion in court in regard to whether or not the woman was of sound mind. The Illinois Supreme Court held that the witness did not have sufficient information on the subject to form a proper opinion of the mental capacity of the deaf woman, and held that the opinion of such a witness was completely inadmissable into evidence.

In regard to guardianships, it was held by the New York courts in the case of *Brower* v. *Fisher,* 4 Johns Ch. 441, that the fact that a person is a deaf-mute is insufficient grounds in itself for the appointment of a guardian. A note based on this case appears in Ewell's Cases on Disabilities, at page 724.

A number of State laws require an interpreter to be furnished whenever a legal proceedings are brought to have a deaf person committed to a mental institution:

Oklahoma:

Title 22 § *1278*—In all criminal prosecutions in which the accused is a deaf-mute he shall have an interpreter furnished at the cost of the court to interpret for him the proceedings of the court. A similar provision requires an interpreter when a deaf-mute is to be committed to a mental institution.

Tennessee:

§ *24–108* *Court Procedure*—Whenever any person, deaf or dumb, or both, is a party to a court action, the court shall appoint a qualified interpreter to interpret at any time he gives testimony during the proceedings. Costs of the interpreter are to be added to the costs of the case.

Minnesota:

§ *253.053* *Insanity, Hearings to Determine: Deaf or Mute Persons*—

Makes it the duty of any court before which the question of the alleged insanity or feeblemindedness of any person who is deaf and mute, or either, is being determined, to appoint a competent interpreter for the benefit of said alleged insane or feebleminded person, to interpret to and for said alleged insane or feebleminded person the question asked, and his answers and all other oral court proceedings at the trial, including any physical, psychological and psychiatric examinations of said deaf or mute person, conducted or had in connection with said hearing or trial, and said alleged insane or feebleminded person shall be entitled to have the services of such interpreter as a matter of absolute right.

Such fees and expenses of such interpreter shall be paid out of the general revenue fund of the county. This section applies to all persons whose means of communication includes the sign language and fingerspelling.

Wisconsin:

Interpreters for the Deaf in the Courts, etc., chapter 269.55—Requires that upon the trial or examination of any mute or deaf person who is unable to read and write, or upon any examination into the mental status of any such person, the court or person or body conducting the trial or examination shall call in an interpreter competent to converse in the special language, oral, manual, or sign, familiar to or used by the deaf person. The expense of furnishing the interpreter must be paid by the government body by which the trial or examination is held if the deaf person is unable to pay.

Illinois:

Whenever any deaf-mute person is a party to any legal proceeding of any nature, or a witness therein, the court, upon the request of any party, shall appoint a qualified interpreter of the deaf-mute sign language to interpret the proceedings to and the testimony of such deaf-mute person. In proceedings involving possible commitment of a deaf-mute person to a mental institution, the court shall appoint such interpreter upon its own initiative. The court shall determine a reasonable fee for all such interpreter services which shall be paid by the Clerk of the Court.

Statutes of this kind fill a vitally important need and every State in the Nation should have such a law.

The Ohio statutes take a somewhat different approach to this problem and provide (sec. 2111.02) that where a guardian is sought to be appointed by the probate court for an incompetent person, if the incompetency is due to a physical disability, the guardian cannot be appointed without the consent of the handicapped person. However, this statute does not fully protect the deaf since without an interpreter he might not be able to properly take advantage of this legal right. The presence of an interpreter at a commitment proceeding against a deaf person is indispensable, and it should be provided for by law.

No discussion of mental illness among the deaf would be complete without recognizing the fact that the rate of such illness is at least as high as among the hearing. The leading publication on this subject is "Family and Mental Health Problems in a Deaf

Population", by the New York State Psychiatric Institute, 1963, published by Columbia University under a grant from the U.S. Department of Health, Education, and Welfare.

A survey undertaken in 1958 showed that the number of deaf persons confined in mental institutions in New York State that year was 230. This was about twice as many as would have been expected for an average (nondeaf) population group of the same size. However, the investigators found that emotionally disturbed deaf persons were more readily hospitalized because of the lack of facilities on the outside, and remained in the hospital longer for the same reason (p. 203 of the report). There was no significant difference in the proportions of schizophrenic patients among the deaf and the nondeaf in these hospitals (p. 241). The problem of homosexuality was found to exist among the deaf, although comparative statistics in this area are impossible to obtain. A verbal report indicated that about 100 deaf cases go through the magistrates court in New York City in a year.

In addition to the number of deaf persons who can be classified as mentally ill, there seems to be a tendency toward emotional immaturity among the deaf at large. Dr. Edna S. Levine, on pages 51–52 of her book, "The Psychology of Deafness," Columbia University Press, 1960, notes that:

> Despite the differences among the research groups and the methods of test administration and interpretation in the few Rorschach investigations reported, the following findings were obtained in all: emotional immaturity, personality constriction, and deficient emotional adaptability. The promise shown * * * in these studies and in present clinical practice warrants more intensive investigation and validation * * *

In view of the special difficulties surrounding the problems of psychiatric diagnosis and mental illness, it is often difficult to determine if a particular deaf person should be classified as mentally ill and, therefore, not responsible for his actions. In most cases, where a crime has been committed, such determinations are made by judges, juries, or prosecutors who have very little knowledge of the subject.

Rule of Evidence in Guardianship Cases

The State of Wyoming has an unusual law that provides that if one party to a legal action is the guardian or trustee of a deaf person, the other party to the case is prohibited from testifying, except under certain stipulated conditions. The purpose of this law is to equalize the positions of the parties to the case on the assumption that, since the deaf person will not be able to testify, the other party should not be permitted to testify either (sec. 1–140 of the revised Wyoming Statutes).

SECTION 36

Driving Privileges of the Deaf

In our present day society, the use of an automobile is often a necessity. Without an automobile it may be difficult or impossible for a person in a suburban or rural area to travel to his place of employment, do necessary shopping, visit doctors, take children to school, or do many other things. Deaf persons frequently use their automobiles even more than persons of normal hearing since a deaf person may not be able to use a telephone and may have to do a great deal of his business in person.

Ability of Deaf Drivers

There is a large amount of authoritative material in existence which indicates that deaf drivers are, on the average, better drivers than those of normal hearing. An excellent article on this subject was written by the Hon. Sherman G. Finesilver, judge of the District Court of Denver, Colo., which was published in the August 1961, issue of "Traffic Safety," a National Safety Council publication.

The following quotations from that article are reproduced here through the courtesy of Judge Finesilver and the editor of "Traffic Safety":

> Our initial study of the driving records of students in the deaf class showed their records to be much better than those of hearing motorists. Their perception and ability to detect potential driving hazards was remarkable. Their reaction time generally was much faster than that of hearing people of comparable ages.
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>
> A comparison was made of the driving records of the 100 Colorado deaf drivers enrolled in the class and two groups of 100 average hearing Colorado drivers. The records of the hearing drivers were selected at random by the Colorado Motor Vehicle Department from its official records. The records of the deaf drivers were also computed by the motor vehicle department.
>
> * * * * * * *
>
> There were fewer moving violations sustained by the deaf drivers with much greater driving exposure. There were 54 percent fewer moving violations incurred by the deaf drivers than by the group A of the hearing drivers and 113 percent fewer violations incurred than by group B.
>
> * * * * * * *

It may seem surprising to many that deaf drivers have a better record than hearing drivers. But there are a number of factors that contribute to this excellent record.

1. Drinking of alcoholic beverages is not generally a problem among deaf drivers; drug intake is minimal. Recent studies indicate that small amounts of alcoholic beverages affect driving ability.

2. Proper seeing habits and well-developed preception of potential driving hazards are highly prevalent in deaf drivers. Nearly 98 percent of driving decisions and reactions are based on sight. These decisions depend upon how clearly and how rapidly we see.

3. There is full concentration of driving with absence of radio and conversational distractions.

4. Deaf drivers are generally conservative drivers and not tempted to take chances. Excessive speed by deaf drivers is relatively uncommon. Conservatism is an attribute recognized as essential for safe driving.

5. Deaf drivers have a deep sense of communal responsibility in their driving activity, recognizing that their driving reflects on other deaf drivers.

6. Deaf drivers generally recognize more so than the great mass of hearing drivers that a driver's license is a privilege to be highly respected rather than a right.

7. Deaf drivers, of necessity, are generally patient and well-disciplined, and they possess wholesome driving attitudes. Patience is a valuable virtue in safe driving.

8. Deaf drivers are not generally subject to highway fatigue or so-called highway hypnosis—these accident-causation elements generally are brought about by prolonged noise and ping of tires.

9. Vehicle care and maintenance is stressed among deaf drivers.

* * * * * * *

In Kentucky motor vehicle administrators state that in recent years no deaf driver has been called for a hearing preliminary to revocation of driver's license.

In Oregon, more than 18,000 drivers with driving records have been interviewed since the Oregon Driver Improvement Program started in 1950. Fewer than 10 deaf persons have been interviewed during that time.

There are approximately 2,000 licensed drivers in Wisconsin with some degree of hearing impediment. A spot check was made several years ago of about 200 such impaired drivers. It was found that they had very little accident involvement and that no deaf person, in recent years, had been involved in a fatal traffic accident.

Out of a total of 127,162 Virginia drivers involved in accidents in 1959, only 111 were reported to have defective hearing. The records fail to reflect, however, whether the deafness contributed to the accident involvement.

A 1953 survey (undertaken by the National Association of the Deaf) disclosed that, compared to overall accident rates, drivers who were not deaf had more than four times as many accidents per year as deaf drivers.

A study of Pennsylvania traffic fatalities several years ago indicated that no deaf driver among 3,000 who hold Pennsylvania driver licenses had been involved in an accident in which a person was killed. During a 10-year span, no deaf driver in Pennsylvania had been involved in an

> accident in which anyone was even hurt. There were more than 3 million drivers registered in Pennsylvania during the period.
>
> In Michigan, it is reported that no deaf teenager has appeared in the teenage traffic courts in nearly 7 years.
>
> Some years ago, the State of New Jersey checked the files for all deaf drivers and analyzed their accident experience for several years. The driving records appeared to be appreciably better than those of hearing drivers.
>
> An article published in Redbook magazine, February 1949, "It Always Happens to Somebody Else," an enlightening article about traffic safety, indicated that studies of a million and a half drivers made by psychologists revealed that the deaf driver is likely to be the safest and most careful driver.
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> * * * * * * *
>
> From this substantial amount of evidence, it is apparent that deaf drivers generally enjoy exceptionally fine driving records.
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> * * * * * * *

A national symposium on this subject was sponsored by the U.S. Department of Health, Education, and Welfare at Denver, Colo., in February 1962. This meeting was attended by national experts in the field of automotive safety, deafness, law, and police work. The proceedings of this symposium were published, and they strongly supported the conclusion that the average deaf driver is an excellent driver.

State Statutes

There are a few State laws which expressly refer to deafness, and which tend to indicate that such deafness shall not be a bar to the issuance of a driver's license. These statutes are summarized as follows:

Florida:

§§ 322.05(7), 234.05, 234.15, 234.16 *Motor Vehicle Operators*—Prohibits issuance of an operator's or chauffeur's license to any person when the director of the Department of Public Safety has good cause to believe that the operation of a motor vehicle on the highways by such person would be detrimental to public safety or welfare. Deafness alone shall not prevent the person afflicted from being issued an operator's license.

Requires a physical examination of bus drivers. Requires each schoolbus driver to have good vision and hearing and that he must pass a physical examination not more than 3 months prior to employment each school year. Permits the county superintendent or the county board to require a reexamination at any time.

Mississippi:

§§ *8093, 8094* *Motor Vehicle Operators*—Prohibits the issuance of a driver's license to any person who would not be able, by reason of a physical disability, in the opinion of the Commission or other person authorized to grant an operator's license, to operate a motor vehicle on the highways with safety, provided, further, that deafness shall not be a bar to obtaining a license. Provides that an application for a driver's license or instruction permit must state whether the applicant has any physical defects which would affect his operation of a motor vehicle.

New Hampshire:

§ *261.3 et seq. Motor Vehicle Operators*—Requires that before an operator's license is granted the applicant shall pass an examination as to his qualifications such as the commissioner of motor vehicles shall prescribe, but provides that no physical defect of the applicant shall debar him from receiving a driver's license unless it can be shown by common experience that such defect incapacitates him from safely operating a motor vehicle.

New Jersey:

§ *39:3–10 et seq. Motor Vehicle Operators*—Permits the Commissioner of Motor Vehicles to refuse to grant an operator's license to any person who is, in his estimation, "not a proper person to be granted such a license," but no physical defect of the applicant shall debar him from receiving a license unless it can be shown by tests approved by the Director of the Division of Motor Vehicles that the defect incapacitates him from safely operating a motor vehicle.

A license to operate trackless trolleys or motorbusses with a capacity of more than six passengers shall not be granted unless the applicant presents evidence satisfactory to the Commissioner of Motor Vehicles as to his physical fitness. Such evidence must be presented annually upon application for renewal of license. The Commissioner may suspend or revoke a license where, in his opinion, the licensee is unfit to retain it.

North Carolina:

§ *20–7 et seq. Motor Vehicle Operators*—Permits the department to determine whether any applicant for an operator's license is physically and mentally capable of safely operating motor vehicles over the highways of the State. If such applicant is found to suffer from any physical defect which affects his or her operation, he may require a certificate of the applicant's condition signed by medical authority designated by the department, the certificate to be treated as confidential. Permits the department to refuse a license to anyone who is not capable of operating a motor vehicle safely. Provides that deaf persons who in every other way meet requirement shall not be prohibited from operating a motor vehicle.

Oklahoma:

Title 47 § 276 Motor Vehicle Operators—Persons to Whom Licenses Shall Not Be Issued—Provides that no person otherwise qualified shall be denied a license because of deafness.

Wisconsin:

Chapter 343.06 Motor Vehicle Operators—Deaf persons otherwise qualified to receive a license under this chapter shall be issued a license in the discretion of the Commissioner of Motor Vehicles.

Most State laws provide that a driver's license shall not be issued to any person who has a physical disability which, in the opinion of the designated state officer, would prevent such person from exercising reasonable and ordinary control over a motor vehicle.

The following States have laws of this general type:

Alabama—Title 36, Section 66
Alaska—Section 50–3–33
Arizona—Sections 28–413, 28–421, 28–424, 28–446
Arkansas—Sections 75–309, 75–318
California—Sections 12800–12806
Colorado—Sections 13–3–10, 13–3–19
Connecticut—Sections 14–36, 14–44
Delaware—Sections 2706, 2711, 2712, 2733
Georgia—Sections 68–706, 92A–404
Hawaii—Sections 160–34, 160–42, 160–51
Idaho—Sections 49–309, 49–316, 49–330, 33–809
Illinois—Title 95½, Sections 315–5 to 6–103
Indiana—Sections 47–2704, 47–2707, 28–3905
Iowa—Sections 321.177, 321.210, 321.375
Kansas—Section 8–241
Kentucky—Sections 186.440(6); 186.570(c)
Louisiana—32, Sections 419, 414(b)(8)
Maine—Chapter 22, Section 60
Maryland—Article 66½, Section 91(h)
Massachusetts—Chapter 90, Section 8
Michigan—Section 9.2003
Minnesota—Section 171.04(9)
Missouri—Sections 302.010(8), 302,060
Montana—Section 31–134
Nebraska—Section 60–401
Nevada—Sections 483.250(7), 483.330, 483.470
New Mexico—Section 64–13–40
New York—Section 501
North Dakota—Chapters 39–06–03, 39–06–13, 39–06–34
Ohio—Sections 4507.08–4507.14, 3327.10
Oregon—Sections 482.130, 482.240
Pennsylvania—Title 75, Sections 604–618
Rhode Island—Section 31–10–3
South Carolina—Sections 46–162, 46–165
South Dakota—Sections 44.03B02, 15, 3313
Tennessee—Sections 59–705—59–707
Texas—Article 6687b
Utah—Section 41–2–5
Vermont—Title 23, Section 631; Title 23, Section 636
Virginia—Title 46, Section 1–378; Title 22, Section 276.1
Washington—Sections 46.20.030, 46.20.150
West Virginia—Sections 1721(211), 1721(215)
Wyoming—Sections 31–263—31–276

No law has been found in any State which definitely forbids deaf persons to drive an ordinary motor vehicle. However, the laws in Indiana, Idaho, South Carolina, and Virginia provide that a driver of a school bus must be able to hear. The law in Indiana (sec. 55–1319, 55–1326) provides that a railroad engineer must be able to hear.

The laws in Maryland, Nebraska, Ohio, and Pennsylvania specifically provide for the issuance of restricted licenses for deaf drivers. In many other States where the law does not specifically cover this, such restricted licenses are issued to deaf persons by administrative authorities acting under their general powers.

There is no State in the Nation at this time in which the motor vehicle administrator is attempting to prevent all deaf persons, as a class, from driving automobiles (see article, "The Deaf Driver" by T. Lindholm, 1963, vol. 15, No. 11 of "The Silent Worker", for a survey of current administrative practices on this subject).

Hearing Test Required

The State of California has a provision in its motor vehicle act requiring a hearing test of applicants for drivers licenses. It can be argued that such a requirement of a hearing test implies that a person who is totally deaf shall not be given a license.

However, the California licensing authorities are well aware that deaf drivers generally have good driving records, and so they have never attempted to apply the law in this manner. They administer a hearing test by way of conversation, and deafness is generally noted on the driver's records and a restricted license may be issued. No attempt has ever been made to use this test as a basis for excluding deaf drivers. The action of the California licensing authorities can be supported by the argument that a requirement of a hearing test might be used for information purposes rather than for purposes of exclusion. Therefore, the action of the California motor vehicle department is not necessarily contrary to law. The State of Iowa also has a law providing for such a hearing test. Laws of this character are contrary to the best interests of the deaf, since if they were strictly enforced they might be used to exclude all deaf drivers who could not pass such a test.

A bill providing for such a hearing test was introduced before the 72d Illinois legislature. But when hearings were scheduled on this bill it was found that although there were a great many experts opposed to the bill, there was no one willing to speak in favor of it. A great deal of documentary material was presented to the Illinois House Committee on Motor Vehicles in March of 1961 in opposition to this House Bill No. 85. Newspaper comment and editorials were highly critical of the bill when its purpose was understood. It failed to pass.

Question of deafness on driver's license application forms

Many States have a question on the driver's license application form similar to the following:

> Do you have any physical handicap which would affect your ability to drive safely?

Deaf persons sometimes read this question as if it said: "Do you have any physical handicap?", omitting the qualifying phrase "* * * which would affect your ability to drive safely." If the question is misread in this manner, the deaf person may answer the question "yes". If he does this, he may be automatically disqualified from obtaining a license since he has expressly stated that he is one of the persons that the State law excludes from obtaining licenses. Deaf persons should be cautioned to read the question correctly, and not to answer the question "yes" if they believe themselves to have full ability to drive safely.

Administrative Restrictions on Deaf Drivers

Where the State law leaves the issuance of a driver's license to the discretion of a State official, the official undoubtedly has a certain measure of authority in deciding such questions. However, the discretion of a State official in such a matter is not unlimited, and must be applied in accordance with the facts of the problem. It is highly questionable whether a State official acting under a statute giving him general powers could exclude the deaf as a class from driving automobiles. If such a case were properly litigated, it is probable that the courts would hold such administrative action to be arbitrary and unreasonable. It would be in conflict with the facts that prove the deaf to be capable drivers.

So far as is known, no State has ever attempted to prevent all deaf persons from driving. However, many States impose special requirements such as the addition of an outside rear-view mirror to any car driven by a deaf person. Such requirements are valid and must be complied with.

From time to time the question has been raised as to whether deaf drivers should be required to have some identifying insignia on their automobiles, as is required of handicapped drivers in certain other countries. The general weight of expert opinion is that there is no need for such a requirement of deaf drivers in this country. The Indiana School for the Deaf Parent-Teacher Association at Indianapolis, Ind., has available plates marked "DEAF" for use by deaf children on their bicycles. These can also be used on automobiles by deaf drivers who wish to have them. It is generally felt that the use of such signs should be voluntary rather than compulsory.

Collisions with Emergency Vehicles

One of the chief problems that the deaf have in driving automobiles is in regard to collisions with ambulances, fire trucks, and police cars. Such emergency vehicles are usually given the right to drive through red lights and on the wrong side of the street as long as they have a flashing red light and a siren in operation. All ordinary traffic is required to pull to the side of the road when they see or hear such an emergency vehicle.

It occasionally happens that a deaf person does not hear the siren and does not see the flashing red light until it is too late, and a collision occurs. Such accidents are comparatively rare, but when they do happen efforts may be made by uninformed persons to bar all deaf persons from driving. It is interesting to note, in connection with this problem, that the Ford Motor Co. has recently developed a safety device that will cause automobile horns, sirens, or similar warnings to operate a flashing light on the dashboard of an automobile. (Chicago Tribune, Sept. 9, 1961). A device of this character was advertised during 1963 in "The Frat" (publication of the National Fraternal Society of the Deaf) as being available from Heller's *Instrument Works of Santa Rosa, Calif.*

Efforts have been made to try to regulate the activities of such emergency vehicles. It has been said that many of them are operated in an unnecessarily dangerous manner. The following bill, written by the author, was passed by the Illinois legislature in 1963:

> *Conditions for Operation.*
>
> § 1. No person shall operate an ambulance, which for purposes of this Act shall include any motor vehicle primarily designed and used for conveyance of sick or injured persons, in a manner not conforming to a provision of the motor vehicle laws and regulation of this State or of any political subdivision of this State as such provision applies to motor vehicles in general, except in compliance with the following conditions:
>
> 1. The person operating the ambulance shall be either responding to a bona fide emergency call or specifically directed by a licensed physician to disregard traffic laws in operating the ambulance during and for the purpose of the specific trip or journey that is involved;
>
> 2. The ambulance shall be equipped with a siren producing an audible signal of an intensity of 100 decibels at a distance of 50 feet from said siren, and with a lamp emitting an oscillating, rotating or flashing red beam directed in part toward the front of the vehicle and containing a power rating of at least 100 amps;
>
> 3. The aforesaid siren and lamp shall be in full operation at all times during such trip or journey; and

> 4. Whenever the ambulance is operated at a speed in excess of 40 miles per hour, the ambulance shall be operated in complete conformance with every other motor vehicle law and regulation of this State and of the political subdivision in which the ambulance is operated, relating to the operation of motor vehicles, as such provision applies to motor vehicles in general, except laws and regulations pertaining to compliance with official traffic-control devices or to vehicular operation upon the right half of the roadway.
>
> *Violation of Act—Penalty.*
>
> § 2. A person who operates an ambulance in violation of this Act shall be liable for the penalty prescribed by the applicable law or regulation of this State or the political subdivision thereof with which he failed to conform in violation of this Act, notwithstanding any provision of such law or regulation exempting therefrom the driver of an authorized emergency vehicle when responding to an emergency call.
>
> (Ch. 95½, sec. 239.4, Ill. Rev. Stat.)

Most State motor vehicle laws provide that emergency vehicles such as police cars, fire trucks, and ambulances, are not subject to the motor vehicle laws during times of emergency if a siren and flashing light are used. Many accidents are caused by such vehicles when they drive on the wrong side of a street or through a red light. Deaf persons may be struck when they fail to hear the siren, and persons of normal hearing may also be struck and injured when they do not have sufficient time to get out of the way.

It is questionable whether there is a net gain to society from the use of such emergency vehicles in violation of the usual motor vehicle laws. The saving of a few minutes time may not justify the large number of accidents that result from this practice.

Some legislatures have recognized this problem and have placed certain limitations on the use of emergency vehicles. The Louisiana Motor Vehicle Code provides as follows:

> Section 32:230—The speed limitations of this chapter do not apply to police vehicles, fire engines, and ambulances operated in emergencies and with due regard for safety. But no owner or operator of such vehicle is protected from the consequences of a reckless disregard of the safety of others.
>
> (Act of 1938, No. 286, sec. 3.)

Since this statutory provision permits an emergency vehicle to exceed the speed laws only, it has been held that under this law an ambulance driver had no right to pass a red light (*Roll Osborn & Sons* v. *Howatt,* (La. App.) 167 So. 466).

The city of New Orleans has passed a somewhat similar city ordinance (sec. 38–37 of the New Orleans City Code) which requires due regard for safety of other persons by drivers of emergency vehicles.

A city ordinance like this has been enacted in the city of Minneapolis, Minn. Such laws are very helpful in limiting the improper operation of emergency vehicles. It should be kept in mind that many collisions involving such vehicles are the fault of the drivers of these vehicles rather than of the persons who are struck.

As previously mentioned in regard to deaf pedestrians, it is generally held that whether or not a deaf person used proper care for his own safety when in a collision with an emergency vehicle is a question for the jury. See *McCullough* v. *Lalumiere,* 156 Me. 479, 166 A. 2d 702 (pedestrian and police car) ; *Goodrich* v. *Cleveland,* 15 Ohio App. 15 (pedestrian and fire truck) ; *Fink* v. *New York,* 206 Misc. 79, 132 N.Y. S. 2d 172 (pedestrian and fire truck).

Where the approach of an emergency vehicle is concealed from a deaf driver by the obstruction of his view by buildings at a corner, or by other traffic, the deaf driver should not be held responsible for the accident.

SECTION 37

Jury Service by the Deaf

If a prospective juror is so deaf that he will not be able to hear all of the testimony, this is good grounds for either party to the case to object to having him serve as a juror (*Higgins* v. *Commonwealth,* 287 Ky. 767, 155 S.W. 2d 209). It is obvious that such a person should not be permitted on a jury. If an objection is made at the proper time to having such a person serve, and the judge refuses to eliminate that juror, this is good grounds for obtaining a new trial.

Regardless of whether or not there may be a statute in that particular State on the subject, a trial judge has full power to remove any juror whom he has reasonable grounds for believing would not be able to hear the testimony (*Jesse* v. *State,* 20 Ga. 156; *Atlas Mining Co.* v. *Johnston,* 23 Mich. 36; *Ickes* v. *State,* 16 Ohio CC 31, 8 Ohio C.D. 442, aff. 63 Ohio St. 549, 49 N.E. 233; *Mitchell* v. *State,* 36 Tex. Crim. 278, 33 S.W. 367, 36 S.W. 456).

The attorneys for the parties should ascertain the hearing ability of the prospective jurors at the time that they examine them for suitability before the trial begins. At this time the attorneys customarily ask various questions and this affords an opportunity to test their hearing (see *Cameron* v. *Ottawa Elec. R. Co.,* 23 Ont. R. 24). If the attorney waits until after the jury has rendered its verdict, it will generally be held that this is too late to make such an objection (see *U.S.* v. *Baker,* 3 Ben. 68, F. Cas. 14499; *Tollackson* v. *Eagle Grove,* 203 Iowa 696, 213 N.W. 222; *State* v. *Parsons* (Mo.) 285 S.W. 412; *Lindsey* v. *State,* 189 Tenn. 355, 225 S.W. 2d 533).

Even where a juror made an affidavit after the verdict was rendered that he had not heard the testimony due to deafness, it was held that this came too late, and that a new trial would not be ordered for this reason (see *Messenger* v. *Fourth Nat. Bank,* 48 How. Prac. 542 (N.Y.), aff. 6 Daly 190).

Where there is some question as to whether or not the juror has sufficient ability to serve on the jury, the decision of the judge on this subject is generally held to be final, even when the juror claims that he did hear all of the testimony. The following cases upheld the discretion of the judge upon this matter.

—*Sullivan* v. *State,* 101 Ga. 800, 29 S.E. 16
—*Zimmerman* v. *Carr,* 59 Ind. App. 245, 109 N.E. 218
—*State* v. *Seiley,* 197 La. 405, 1 So. 2d 675
—*State* v. *Reed,* 206 La. 143, 19 So. 2d 28
—*Conover* v. *Jones,* 5 N.J.L.J. 349
—*Parish* v. *State,* 77 Okla. 436, 142 P. 2d 642
—*Safran* v. *Meyer,* 103 S.C. 356, 88 S.E. 3
—*Drake* v. *State,* 5 Tex. App. 649
—*Myers* v. *State,* 77 Tex. Crim. 239, 177 S.W. 1167

A large number of States have passed statutes providing that a juror must be in possession of his natural faculties; that he must not be deaf; that judges may find a prospective juror to be incompetent because of a physical infirmity that would interfere with his duties. The following States have statutes on this subject:

Connecticut—Sections 51–217, 219
Florida—Section 40.08
Idaho—Section 2–201
Illinois—Title 73, Section 2
Indiana—Section 9–1504
Iowa—Section 607.1
Kansas—Section 43–102
Louisiana—13, Sections 3041, 3042
Maine—Chapter 116, Section 4
Michigan—Section 27.246
Minnesota—Sections 628.42, 628.49
Montana—Section 93–1301
Nebraska—Section 25–1601
Nevada—Sections 6.010, 6,030
New Hampshire—Section 500:29
New Jersey—Section 2A:26–1
New York—Section 596
North Dakota—Chapter 27–09–02
Ohio—Section 2313.16
Oklahoma—Title 38, Section 28
Oregon—Section 10.030
Rhode Island—Section 9–10–9
South Dakota—Section 32.1001
Tennessee—Section 22–102
Utah—Section 78–46–8
Vermont—Title 12, Section 1401
Washington—Section 2.36.110
Wisconsin—Chapter 255.01
Wyoming—Sections 1–77

Deaf Person Subpoenaed for Jury Service

A deaf person who is served with a subpoena to appear for jury service frequently thinks that it must be a mistake and disregards the subpoena. This should not be done, since it leads to a warrant being issued for his arrest. The right procedure is for the deaf person to appear at the proper time and place and inform the judge or other court official or jury clerk of his hearing impairment, and be excused from serving. Such an explanation will invariably lead to his dismissal from jury service.

SECTION 38

Right of Deaf Persons to Hold Public Office

The general common law rule is that any person who is qualified to vote is eligible to hold a public elective office. The right of citizens to elect anyone they desire to hold public office cannot be limited except by a general statute applicable to anyone within the classification (*Ward* v. *Crowell*, 76 P. 491, 142 Cal. 587; State ex rel.; *Schur* v. *Payne*, 63 P. 2d 921, 57 Nev. 286).

Therefore, in the absence of a general statute forbidding it, it was held that a blind man had a legal right to hold the office of police court judge, to which he had been elected by the voters of his jurisdiction. The fact that his physical handicap might make it difficult for him to carry out his official duties was held to be legally immaterial (*State ex. re. Shea* v. *Cocking*, 66 Mont. 169, 213 Pac. 594). Likewise, it was held that a tax assessor could not be removed from his office because of his feeble physical condition and speech difficulty (*People ex rel. Haverty* v. *Barker*, 1 App. Div. 532, 37 N.Y. Supp. 575). It was held in the case of *Sharps* v. *Jones*, 100 W. Va. 662, 131 S.E. 463, that the fact that a person was hard of hearing was not proper grounds for his being removed as a school trustee.

The right of a handicapped person to hold a public office to which he has been elected is not only his own personal right, it is also the right of the citizens who voted for him and who wanted him to serve in that office. This general legal principle applies to deaf persons who are elected to public office.

However, this rule applies only to elected offices. Where a person is appointed to a public office, deafness may be valid grounds for the appointing authority to remove the deaf person if the deafness affects his ability properly to carry out the duties of that office.

Where a statute gave a police commissioner power to remove a police officer from his position for good cause, it was held that deafness was a valid ground for removing a policeman from his position (*State* v. *Police Commissioner*, 49 N.J.L. 170).

The State of Louisiana has a statute, section 3107 of the Civil

Code, that provides that persons who are deaf cannot be arbitrators.

Practice of Law by Deaf Attorneys

The ethics of the legal profession provide that attorneys should not solicit legal business from persons they do not know. This is generally applied between one attorney and another, as well as between attorneys and members of the public.

However, the New York County Committee on Legal Ethics has held in its Legal Opinions on Ethics, No. 280, that a deaf lawyer may send cards to other attorneys stating that he is available to perform services for them. Deaf attorneys appear to have been given a special privilege to this extent (see "Legal Ethics" by H. S. Drinker, 1953, Columbia University Press, N.Y.).

SECTION 39

Federal Income Tax Matters Concerning the Deaf

Medical Expenses

Section 213 of the Federal Revenue Code provides for the deduction of medical expenses in computing the income of individuals subject to tax, subject to certain limitations and restricts. Subsection (e) (1) (a) provides that medical care includes the mitigation of disease. It has therefore been held that money spent for hearing aids, batteries, wires, repears and such are deductible items (see Federal Tax Regulation 1.213-1(e) (iii)).

Some persons with hearing impairments not only have hearing aids, they also have special doorbell systems, amplifiers on their telephones, baby-cry alarms, and other electronic devices that are used because of their deafness. These should likewise be deductible as medical expenses, although there is no ruling on record dealing with such items.

It is established that the cost of a seeing eye dog is a deductible medical expense by a blind person (regulation 1.213-1-e-iii). The question often arises whether a deaf person can deduct the cost of a dog which has been specially trained to let him know when someone comes to the door, when the telephone rings, or when a child cries. There is no decision on record on this point, but if the dog is specially trained and is kept only for this purpose, the costs of such a dog should likewise be deductible.

In deducting the cost of a hearing aid, the entire amount paid during the year can be deducted during that year. It is not necessary to depreciate the cost of the instrument over a number of years, even though the instrument will be used for several years.

The cost of sending a deaf child to a school for the deaf to receive special training on account of the child's handicap is a deductible medical expense (Reg. 1.213-1(e) (v) (a)). All special expenses of training a deaf child, such as lipreading or speech training are deductible (Rev. Rul. 55-261, 1955-1, CB 307, modified by Rev. Rul. 58-280, 1958-1, CB 157). This includes the cost of transportation to such special schools.

The Federal Revenue Code provides for certain limitations on the amount of medical expenses that can be deducted during any one year. However, if a taxpayer is over 65 years of age and disabled, the usual limitations do not apply. Regulation 1.213(c) (2)(ix) provides that a person is so disable if he has the condition of "total deafness uncorrectable by a hearing aid." To such a person, the usual limits do not apply and larger amounts may be deducted.

Expenses For Care of Certain Dependents

Section 214 of the tax code provides that where a wife is working and it is necessary for her to pay other persons to take care of her dependents so that she will be free to work, the amounts paid can be deducted in some cases, subject to certain limitations. However, the usual limitations may not apply if "the taxpayer's husband is incapable of self-support because he is mentally or physically defective." There is no case on record dealing with the question of whether this clause would apply to a deaf person, but in a suitable case it probably would.

Business Expenses

It has been held that the cost of a hearing aid cannot be deducted as a business expense even though it is used for business (case of Paul Bakewell, Jr. 23 T.C. 803, Dec. 20, 845).

Damages for Loss of Hearing

Amounts received from insurance companies or from defendants in lawsuits on account of a loss of hearing are not taxable income under section 104(a)(2) of the Internal Revenue Code. Such amounts do not have to be reported on the person's Federal income tax return.

Contributions

The question often arises as to whether contributions to various organizations of the deaf are deductible on the individual's Federal income tax return. Contributions to the well known national organizations which are operated exclusively for religious, charitable or educational purposes, are deductible. In the case of smaller groups, each case depends upon its particular facts and circumstances. Donations to purely social groups are not deductible.

Support of Children in Special Schools for the Deaf

Deaf children are frequently sent to special schools for the deaf which are supported by governmental or religious bodies. The school may support the child for 10 months of the year without charge to the parents, and the parents may support the child for 2 months of the year. Ordinarily a parent is entitled to an exemption of $600 for a child only if the parent provides more than half of the child's support.

It has been decided by the Federal tax department that in this situation the support given to the child by the governmental or religious body can be disregarded in determining whether the parents have provided more than half of the support of the child. The parents of a deaf child are entitled to the exemption although they supported the child for only 2 months of the year, or for some other short period (see ruling No. 59–379, I.R.B. 1959–49,7).

Typographical Union Dues

Union dues are one of expenses that are deductible under certain circumstances in computing the net income subject to tax. Many deaf persons are members of the International Typographical Union. This union sometimes charges dues of 6 or 6½ percent of gross wages. This is a very large amount and the question is often raised by both taxpayers and treasury agents as to whether all of such dues are deductible. The Federal tax department has issued a special ruling on this subject, holding that such dues are deductible, even though a large part of such dues are put into a retirement fund for union members (see Rev. Rul. 54–190, I.R.B. 1954–22).

Extra Exemptions for the Handicapped

Under the present Federal income tax laws, blind persons are entitled to an extra $600 exemption. Certain groups have frequently suggested that such an extra exemption should not be limited to the blind, and that it should also be extended to those who are deaf or crippled.

House bill No. 3793 was introduced before the 88th Federal Congress in 1963 to grant such an extra exemption to those who are disabled by the permanent loss of use of one or more of the limbs of the body. A similar bill was proposed for the deaf but they indicated that they were not in favor of it.

SECTION 40

State Tax Exemptions for the Deaf

A number of States have passed laws providing for State tax exemptions for deaf persons. These laws are as follows:

Alabama:

Tax Exemptions

Title 51, § *2*—Exempts from taxation the property of deaf mutes, insane or blind persons to the extent of $3,000.

Alabama Constitution, Amendment 109—Exempts blind and deaf persons from payment of the poll tax.

Delaware:

Taxation, physical defect—Provides a personal examption for income tax purposes of $200 for each person dependent upon and receiving his or her support from the taxpayer if such dependent person is under 20 years of age or is incapable of self-support because of a physical defect.

Iowa:

Fishing license, students of school for deaf § *110.17*—Exempts from the requirement of hunting and fishing licenses, minor pupils of the State school for the deaf.

Mississippi:

Poll Tax—Exemption of Deaf Persons

Mississippi Constitution, Art. 12, § *243*—Exempts from the payment of the poll tax all persons who are deaf and dumb.

§ *3163*—Provides, with respect to elections, the exemption of deaf and dumb persons from the payment of the poll tax.

§ *9751*—Exempts from the assessment of poll taxes persons who are deaf and dumb.

§ *9678,* §§ *9696–217*—Exempts from the payment of the privilege tax all deaf and dumb persons with an annual income of not more than $900. This applies only to the Privilege Tax that is imposed on the operation of certain enumerated types of businesses.

Tennessee:

§ *67–401*—Exempts persons who are deaf or dumb from payment of the annual poll tax.

Deaf persons often tend to oppose such tax exemption laws, even though the laws are intended for their benefit. It is often felt that the benefit obtained by such laws is too slight to be of any practical importance and that such laws are offensive in that they imply that the deaf are unable to fulfill the usual responsibilities of citizens. Such State tax exemptions are seldom claimed or used by the deaf.

Sales Tax Laws

A number of State sales tax laws provide that sales of hearing aids are exempt from the tax. These States are as follows:

State	*Tax code*	*Exemption for*
Connecticut	Sec. 12–412(s)	Artificial hearing aids when designed to be worn on the person.
District of Columbia	Sec. 47–2605	Artificial hearing device.
Florida	Sec. 121.08(2)	Hearing aids.
Maryland	Sec. 326, Art. 81	Artificial hearing devices.
New York City	Sec. N41–2.0(1)	Hearing aids.
North Carolina	Sec. 105–164.13(12)	Hearing aids.
Pennsylvania	Sec. 203	Artificial hearing devices when designed to be worn on the person.
Rhode Island	Sec. 44–18–30	Artificial hearing devices.

There is also an exemption in the Ohio sales tax law, section 5739.02(B), for "medically prescribed devices * * * to give support * * * to weakened parts of the body," but this would not apply to hearing aids since they do not support the body; they merely aid the body in functioning properly.

SECTION 41

Immigration and Naturalization

Immigration

Title 8, Section 1182 of the United States Code provides in regard to immigration that the following classes of aliens shall not be admitted to the United States:

> (a) (7) Aliens * * * who are certified by the examining surgeon as having a physical defect, disease, or disability, when determined by the consular or immigration officer to be of such a nature that it may affect the ability of the alien to earn a living, unless the alien affirmatively establishes that he will not have to earn a living; * * *

The above clause speaks of a disability which "may affect the ability of the alien to earn a living." If this statute were strictly applied it would have the effect of totally excluding almost all deaf persons from this country, since deafness certainly may affect a person's earning ability.

However, the Federal immigration department has always taken the position that a person's trade, occupation, or profession must be considered in determining his earning ability, and the effect that the deafness will have upon this ability. An alien with an established trade and a good record of employment will not be excluded solely because of his deafness. The immigration department does not give this part of the statute a strict construction, but interprets it liberally.

Even if the deaf alien has no established trade he may be able to gain admission if he can show that he will be supported by his relatives in this country (see the case of *U.S.* v. *Todd,* 294 Fed. 820).

An immigrant is also required to pass a literacy test. In practice, he will not be required to read aloud if he is deaf, but will be given some form of a written test (see *Tullman* v. *Todd,* 294 Fed. 87).

A great many deaf persons have entered this country from other countries. They generally turn out to be very capable individuals who make exemplary citizens.

Naturalization

One of the requirements of becoming a citizen of the United States is that the person must learn to speak and understand English. In the case of the deaf, this requirement may be satisfied by learning to lipread with a sufficient degree of proficiency. However, in suitable cases the Naturalization Service will waive this requirement. The following letter was received by the author, dated October 12, 1962:

> Dear Sir:
>
> * * * You are informed that a person, who is a deaf-mute, is exempt from the requirement that he speak and understand the English language. However, he must be able to establish that he is a person of good moral character and attached to the principles of the Constitution of the United States. In that connection he must be questioned by an examiner of this Service. To do that it would be necessary for him to be accompanied by another person who could communicate with him by sign language or lipreading.
>
> Very truly yours,
>
> IRVING I. FREEDMAN,
> *Assistant Director for Citizenship,*
> *Chicago District, Immigration and Naturalization Service*

Due to the liberal interpretation of the Federal laws that is followed by the Immigration and Naturalization Service, deaf persons are generally able to enter this country and to become citizens of the United States.

SECTION 42

Workman's Compensation Laws

Under the workman's compensation laws, a person who is injured in the course of his employment is entitled to specified sums of money from his employer, regardless of the fact that the accident may not have been the employer's fault. The general practice is that the employer takes out workman's compensation insurance to cover any such claims. In this manner the cost of injuries suffered during employment is spread out over the entire industry.

The workman's compensation laws in force in the various States are, of course, highly complex. Not all occupations may be subject to the law, and difficult problems may arise in applying the statute to specific cases. Where the occupation is covered by the statute, the employee's only course of action is generally under the workman's compensation law, since the State law usually provides that the workman's compensation law is the exclusive remedy in those cases to which it applies. Therefore, where this statute applies, the employee generally cannot bring a common law action.

The amounts that are given to injured workers under the Workman's Compensation Act are generally somewhat low compared to jury verdicts in common law cases. Therefore, when an injured worker has a good case at common law, he often attempts to prove that he is not covered by the Workman's Compensation Act. On the other hand, when he has no case at common law, he generally attempts to show that he was covered by the Workman's Compensation Act.

Deafness Arising Out of Employment

When a person becomes deaf due to something that happened while the person was working, the person may be entitled to recover damages from the employer under the State workman's compensation laws. Whether the deafness was caused by the work, or if it was caused by something apart from the work, is frequently a disputed matter.

In the case of *Winkelman* v. *Boeing Airplane Co.*, 166 Kan. 503, 203 P. 2d 171, the plaintiff worked as an instructor of guards for the corporation. He worked at a pistol range where he was subjected to loud noises from the firing of .38 caliber pistols. He gradually became deaf. At the trial of his case a specialist in otolaryngology testified in his behalf that the deafness arose from the noises at the pistol range. The plaintiff had brought his suit at common law, but upon this medical testimony the court held that the injury arose during the course of his employment and it was subject to the workman's compensation law. The result was that his lawsuit was dismissed. He was limited to bringing a claim under the Workman's Compensation Act before the proper administrative agency and not in court. He got much less under the workman's compensation law than he would have obtained in a successful common law action.

It has frequently been held under the Workman's Compensation Act that a continued exposure to loud noises may cause an injury resulting in deafness that entitles a person so injured to an award under the act. In the case of *Marie* v. *Standard Steel Works (Mo.)*, 319 S.W. 2d 871, the employee worked for over 6 years as a welder of trailer truck tanks. He worked inside the tanks which were being constantly struck by sledge hammers. He became deaf and claimed an award under the Missouri Workman's Compensation Act. The employer claimed that he had not proven that the deafness arose from his employment and that it might possibly have been produced by other causes. The Missouri Supreme Court discussed the problem as follows:

> The process of the disease is the destruction or degeneration of nerve ends in the cochlea. It is induced by the repetitive noises over a long period of time and the resulting injury and disability is the impairment of hearing. The pathology of "boilermaker's ear," as it was sometimes referred to in oral argument, is the same as that of Menier's Disease and presbycusis, which is the lessening of the acuteness of hearing normally occurring in old age. Apparently, it is not known to medical science whether the striking or beating of the repetitive sounds on the organs of the ear over a long period of time sets up a destructive infection or precisely what it is that causes the deterioration of the nerve ends in the cochlea. However, the etiology or cause of a disease is not necessary in order for it to be classified as such.

The court upheld the finding of the Missouri Industrial Commission that the employee had suffered an occupational disease that was covered by the Act, and that he was entitled to an award even though the exact medical cause of his deafness was not wholly understood.

Similarly, a man who worked in a noisy steel mill for 30 years and became deaf was held to be entitled to an award even though the exact date on which he became deaf could not be determined with any degree of certainty: *Grano* v. *Despatch Shops,* 7 A.D. 2d 6, 179 N.Y.S. 2d 192. A man who worked in a noisy shipyard for 17 years was held entitled to an award in the case of *Bake* v. *Ira S. Bushey & Son,* 5 A.D. 2d 242, 171 N.Y.S. 2d 192. A man who worked as a riveter for almost 30 years in a steel mill where railroad cars were made won an award in the case of *Lumsden* v. *Despatch Shops,* 5 A.D. 2d 242, 171 N.Y.S. 2d 189. An employee who worked as a riveter in a steel plant for 27 years won an award in the case of *Slawinski* v. *Williams & Co.,* 298 N.Y. 546, 81 N.E. 2d 93. A man who worked in a room where there were about 100 machine hammers was held entitled to an award in the case of *Green Bay Drop Forge* v. *Industrial Commission,* 265 Wisc. 38, 60 N.W. 2d 409, 61 N.W. 2d 847.

In all of these cases the company that employed the deaf person claimed that he could not prove that the deafness arose from the occupation, and appealed the decision to the higher courts; and in each suit the employer lost the case and the deaf employee was granted an award.

In the case of *Katona* v. *Federal Shipbuilding & Dry Dock Co.,* 136 N.J.L. 474, 56 A. 2d 609, a steampipe burst in the hold of a ship where the employee was working. The steam explosion went into his left ear and it was agreed that it had deafened that ear. Fifteen months after the accident took place the employee claimed that the accident had also partially deafened his right ear. The employer claimed that this was highly unlikely. But the court found nothing unusual or suspicious about this. The Supreme Court of New Jersey said:

> * * * it would seem that trauma of sufficient force to destroy hearing in the left ear would in all human likelihood materially affect the hearing of the right ear * * *
>
> * * * it is fairly clear that he was not aware of this particular disability prior to its discovery by the physician. The failure of one to recognize a hearing deficiency is not unusual.

In the case of *H. K. Ferguson Co.* v. *Kirk,* 343 S.W. 2d 900, a welder was injured by a spark of burning metal which entered his left ear and perforated the eardrum. The ear became infected and a partial loss of hearing followed. His wife and child testified that his hearing was perfect prior to the accident. It was held that he was entitled to an award although the physicians who had worked on the case could not tell with certainty whether the deafness arose from the accident or from some other cause.

In the case of *McDonald* v. *State,* 14 Ill. Ct. Cl. 92, a man was employed as an attendant at a state hospital. He contracted typhoid fever which resulted in a permanent loss of hearing in his left ear. It was held by the Illinois Court of Claims that the deafness arose out of his employment, and that he was entitled to an award under the Workman's Compensation Act.

The fact that exposure to loud and continuous noises is likely to lead to loss of hearing has been established by careful scientific tests. For a full report on this subject see: "Noise and Hearing" by C. D. Yaffe and H. H. Jones, published by the U.S. Department of Health, Education, and Welfare, Public Health Service Publication No. 850, 1961, available from the U.S. Government Printing Office.

However, the burden of proof is upon the claimant to show that the deafness resulted from his employment, and if he cannot prove this with a reasonable degree of certainty he will not be able to obtain workmen's compensation payments.

In the case of *Associated Employer's Reciprocal* v. *State Industrial Commission,* Okla., 200 Pac. 862, an employee claimed that his hearing was injured while working under heavy air pressure in sinking a pier below the waterline. The only evidence that the employee produced at the trial to prove that his deafness resulted from his employment was a written report from his physician. This report stated that it was impossible for the physician to determine the exact cause of the deafness. The employee did not testify himself, which he could have done. It was held by the Oklahoma court that there was not sufficient evidence produced at this hearing to support a finding in the employee's favor. If the employee had testified himself in a proper manner, he would probably have won his case; but by failing to testify, he lost it.

Similarly, in the case of *Ferst* v. *Dictograph Products Corp.,* 193 App. Div. 564, 184 N.Y. Supp. 422, an employee worked as a tester of dictograph machines. He used his hearing to test 30 to 40 machines a day. After 3 weeks of employment he suffered pain in his ear and temporary deafness. At the trial of his case he testified himself, but he presented no medical evidence. The medical advisor of the Workman's Compensation Commission testified that the employee's hearing was good in both ears. The employee therefore lost his case due to lack of proper medical evidence. He did not prove that deafness existed.

The case of *Helmericks* v. *Air Research Mfg. Co. of Arizona,* 88 Ariz. 413, 357 P. 2d 152, involved an engineer who was working on sound intensity studies. During these studies he was subjected to loud noises. After about 2 weeks he became ill and it was discovered that he was suffering from a nerve type of deafness. It was held that he was not entitled to an award because he could not prove that the deafness arose from his employment, as the condition might have existed before he took the job. In the case of *Sullivan* v. *C. & S. Poultry Co.,* 234 Miss. 126, 125 So. 2d

558, it was held that exposure to the chemical sodium hypochlorite could not cause deafness. Moreover, the plaintiff's actions in the courtroom indicated that his deafness was not genuine.

These cases show that when a person accepts a job that might affect his hearing he should first have his hearing tested by a competent authority. If he should become deaf at a later time, this will help to prove that his deafness may have been caused by his employment. However, in most cases the testimony of his friends, relatives and fellow employees and his own testimony will be accepted to prove that he was not deaf prior to his employment in that position.

Statutes

The following statutes relate to schedules in workman's compensation statutes which contain provisions for loss of hearing:

Alabama Code tit. 26 Sec. 279(c)1
Alaska Comp. Laws Ann. Sec. 43–3–1
Arizona Rev. Stat. Ann. Sec. 23–1044
Arkansas Stat. Sec. 81–1313(c)
Colorado Rev. Stat. Ann. Sec. 81–12–4
Connecticut Gen. Stat. Rev. Sec. 31–162
Delaware Code Ann. tit. 19 Sec. 2326
Florida Stat. Ann. Sec. 440.15
Georgia Code Ann. Sec. 114–406
Hawaii Rev. Laws Sec. 97–26(a)
Idaho Code Ann. Sec. 72–313
Illinois Rev. Stat. ch. 48 Sec. 145(e)
Indiana Ann. Stat. Sec. 40–1303
Iowa Code Sec. 85.35
Kansas Gen. Stat. Ann. Sec. 44–150
Kentucky Rev. Stat. Ann. Sec. 342–105
Louisiana Rev. Stat. Sec. 23:1221
Maine Rev. Stat. Ann. ch. 31 Sec. 13
Maryland Ann. Code art. 101 Sec. 36
Massachusetts Gen. Laws Ann. ch. 152 Sec. 36
Minnesota Stat. Ann. Sec. 171.13
Mississippi Code Ann. Sec. 6998–09
Missouri Rev. Stat. Ann. Sec. 287.190
Montana Rev. Code Ann. Sec. 92–709
Nebraska Rev. Stat. Sec. 48–121
Nevada Rev. Stat. Sec. 616.590
New Hampshire Rev. Stat. Ann. Sec. 281:26
New Jersey Stat. Ann. Sec. 34:15–12

New Mexico Stat. Ann. Sec. 59–10–18.4
New York Work. Comp. Sec. 15
North Carolina Gen. Stat. Sec. 97–31
North Dakota Rev. Code Sec. 65–05–15
Ohio Rev. Code Ann. Sec. 4123.57
Oklahoma Stat. Ann. tit. 85 Sec. 22
Oregon Rev. Stat. Sec. 656.214
Pennsylvania Stat. Ann. tit. 77 Sec. 513
Rhode Island Gen. Laws Ann. Sec. 28–33–19
South Carolina Code Sec. 72–153
Tennessee Code Ann. Sec. 50–1007
Texas Rev. Civ. Stat. tit. 8306 Sec. 12
Utah Code Ann. Sec. 35–1–66
Vermont Stat. Ann. tit. 21 Sec. 648
Virginia Code Ann. Sec. 65–53
Wisconsin Stat. Ann. Sec. 102.52

Some State workman's compensation acts specifically provide that when an employee loses his hearing during the course of his employment the employer is required to furnish him with a hearing aid, if one is needed, in addition to the money award prescribed by the act (Michigan Rev. Stat. Sec. 17.154; New Hampshire Rev. Stat. Sec. 281:21; Oregon Rev. Stat. Sec. 656.207). However, most State statutes do not contain this provision because it is felt to be impliedly included under a more general provision that requires the employer to furnish all medical assistance and medical devices that are necessary to alleviate the handicap.

The State of Missouri has given special consideration to the question of deafness as being an occupational disease covered by the act. The State law provides that an employer can exclude this coverage if he so desires (Missouri Rev. Stat. Ann. Sec. 287.-063–2). This is a very unusual provision. The Missouri act also contains detailed provisions in regard to the special tests, claims, and awards that may be made for occupational deafness.

Partial Awards for Partial Loss of Hearing

In some cases the Workman's Compensation Act may provide for an award only if there is a permanent and total loss of hearing. In this situation a total loss of hearing in one ear will entitle a worker to an award, but a partial loss of hearing in either or both ears will not entitle him to an award (*Freeman* v. *State*, 11 Ill. Ct. Cl. 11; *Jones* v. *State*, 11 Ill. Ct. Cl. 537; *Tyler* v. *State*, 12 Ill. Ct. Cl. 101; *McDonald* v. *State*, 14 Ill. Ct. Cl. 92; *Casey* v. *State*, 15 Ill. Ct. Cl. 93; *Jesse* v. *State*, 16 Ill. Ct. Cl. 13).

This is a highly unsatisfactory situation because it means that a person who becomes totally deaf in one ear and has normal hearing in the other ear, a net total of 50 percent of normal hearing, is entitled to an award; while a person who has a 90 percent loss of hearing in both ears, a much more severe handicap, is not entitled to anything. It is much more reasonable to provide that a person who becomes deaf during the course of his employment should be entitled to a partial award in proportion to the amount of his disability.

It has been argued that to make partial awards for partial loss of hearing would create administrative problems because a great many people have some loss of hearing as they grow older, and it would be difficult to attempt to measure accurately the exact degree of loss. But these objections do not seem to be valid in view of the fact that partial awards for partial disability in back injuries, neck injuries, and such, are made routinely, without any particular difficulty. The same objections in regard to the commonness of the disability and the difficulty of measurement also exist with respect to other injuries, but the courts do not seem to have any particular problems in handling these situations. Loss of hearing should not be treated differently, and partial awards should be made where appropriate.

Second-Injury Legislation

The workman's compensation laws contain schedules that provide for the payment of different sums of money for different types of injuries. The more serious the injury, the greater will be the award. Some of the largest awards are made to employees who are totally disabled as the result of an accident.

When a person has a previous handicap, the addition of another disability may cause him to become totally disabled, although the second injury alone would not have this effect. For example, if a man is a totally deaf laborer, he may not be handicapped in his employment since his deafness does not interfere with his work. However, if he should then lose a hand through some industrial accident, this loss, combined with his deafness, may cause him to be classified as totally disabled since he could no longer work as a laborer and he might be unable to work at anything else.

Under these circumstances, under some State workman's compensation laws, the employer would be required to pay him the larger award for total disability instead of the smaller award for the simple loss of a hand. An injury to a previously handicapped person may have a much greater effect than a similar injury to a person who has no other disability. For this reason, some employers are reluctant to hire handicapped workers.

Some States have enacted so-called second-injury legislation to solve this problem. Such laws provide that if a previously handicapped person receives a second injury, the employer will not be liable to pay this employee more than he would pay an employee who was not previously handicapped. The employee is still entitled to the full amount due to him, based on the full effect of the second injury, which may be total disability. The difference between what the employer pays and what the employee receives is paid from a special fund known as a second-injury fund. This fund is accumulated from contributions made by all employers in the State. In this way, the special hardship created by a second injury is spread out among all employers in the State. This tends to eliminate discrimination by employers against the handicapped.

The following States have second-injury legislation of one kind or another.

Alabama—Title 26, Secs. 279(e)(2), 288(1), 288(2).
Alaska—Sec. 32, Ch. 193 S.L.A. 1959, amended Ch. 117 S.L.A. 1960.
Arizona—Rev. Stat. 1956, Secs. 23–1065, 23–932, 23–967, 23–984, 23–1025, 23–1028, 23–1125, 23–1166, 23–1185, 23–1229, 23–1242.
Arkansas—Anno. Stat. 1947 (as amended.) Sec. 81–1313(f).
California—Labor Code, Secs. 4750, 4751, 4754.
Colorado—Rev. Stats. 1953, Sec. 81–12–7.
Connecticut—General Stats. (Revision of 1958) sections 31–216, 31–221, 31–221a, as amended by Public Act. 580, Laws of 1959.
Delaware—Anno. Code, 1953, Title 19, Secs. 2326, 2327, 2395, 2397.
District of Columbia—U.S. Code Anno. Secs. 33–908, 33–939, 33–944, and Public Law 803 (84th Congress.)
Florida—Stats. 1957, Sec. 440.15(5.)
Georgia—No subsequent injury fund law.
Hawaii—Rev. Laws 1955, Secs. 97–25, 97–26.5, 97–99, 97–27, 97–100.
Idaho—Code 1947 (as amended), Secs. 72–314, 72–315.
Illinois—Rev. Stat. 1959, Ch. 48, Secs. 138.7(f), 138.8(e)(20), 138.8(f.)
Indiana—Burns Indiana Stat. 1933, Sec. 40–1305(a).
Iowa—Code of 1950, Secs. 85.31(6), 85.55, 85.64, 85.65. 85.66.
Kansas—G.S. 44–567 through 44–571, as amended by H.B. 422, Laws of 1961.
Kentucky—Rev. Stat. as amended, Secs. 342.120, 342.122.
Louisiana—No subsequent injury fund law.
Maine—Rev. Stat., 1954, Ch. 31, Sec. 14.
Maryland—Flack's Anno. Code 1951, (as amended) Art. 101, Sec. 67.
Massachusetts—General Laws, 1932, as amended, Ch. 152, Secs. 37, 65., "op cit" Secs. 37A, 65N.
Michigan—Comp. Laws (1948), Sec. 412.8(a) and 412.9.
Minnesota—Stat., 1953, Sec. 176.13
Mississippi—Code 1942 Anno., Recompiled 1952, Sec. 6998.37, as amended.
Missouri—Rev. Stat. 1959, Secs. 287.141, 287.220, 287.690, and 287.715, 287.710.

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Montana—Rev. Codes, 1947, Sec. 92-709A.
Nebraska—Rev. Stats. 1943, Sec. 48-128.
Nevada—No subsequent injury fund law.
New Hampshire—Rev. Stat. Anno. 1955, Secs. 281.47, 281.48.
New Jersey—Rev. Stats. 1937 (as amended), Secs. 34:15-94, 34:15-95.
New Mexico—Ch. 134 Laws 1961.
New York—Consol. Laws, Ch. 67, Sec. 15(8).
North Carolina—Gen. Stats. 1943 (Recomp. 1950), Secs. 97-33, 97-35, 97-40, 97-40.1.
North Dakota—Secs. 65-04-17, 65-04-18 NDCC.
Ohio—Laws of 1955, H. 642, and Rev. Code of 1953, Secs. 4123-34, 4123.35, 4123.63, 4123.343.
Oklahoma—Stat. 1951, Title 85, Secs. 172, 173.
Oregon—O.R.S., Secs. 656.516, 656.460.
Pennsylvania—Purdon's Stat. Anno. Title 77, Sec. 516.
Puerto Rico—Laws of 1935, Act No. 45, as amended, Secs. 3(4), 23(1).
Rhode Island—General Laws, 1938, as amended, Ch. 300, Art. II, Sec. 26; Art. IIA, Secs. 4, 6, 9, 28; Ch. 82 P.L. 1961.
South Carolina—Code of 1952, Secs. 72-131, 72-165, 72-166, 72-168, 72-189, 72-258.
South Dakota—S.D.C. 1960 Supp., Sec. 64.0112.
Tennessee—Code Anno., Sec. 50, 1027.
Texas—Vernon's Stats., 1948, Title 130, Art. 8306, Secs. 12c-1, 12c-2.
Utah—Code Anno. 1953, Secs. 35-1-67, 35-1-68, 35-1-70.
Vermont—Title 21, V.S.A. Sec. 683.
Virginia—No subsequent injury fund law.
Washington—Rev. Code, Secs. 51.16.120, 51.44.040.
West Virginia—Code of 1935, Ch. 23, Secs. 2523, 2534(2).
Wisconsin—Stats. 1953, as amended, Sec. 102.59.
Wyoming—Comp. Stat. 1945, Secs. 72-201, 72-202.

Some of these second-injury laws apply only where the first injury is of a special kind, such as the loss of a limb. In the following States the first injury is defined broadly enough in the statute so as to apply to a deaf employee who is subsequently injured:

Alaska—Any previous disability.
California—Any permanent partial disability.
Connecticut—Any permanent partial incapacity.
Delaware—Any permanent injury from any cause.
District of Columbia—Any previous disability.
Florida—A permanent physical impairment.
Hawaii—Any previous disability.
Kansas—Any loss of use of any member of the body. (It is questionable whether this would apply to deafness.)
Kentucky—Any disability.
Minnesota—Any physical or mental condition which is likely to be an obstacle to obtaining employment.
Missouri—Permanent, partial disability.
Nebraska—Any previous disability other than one caused by disease.
New Hampshire—Permanent partial disability, including loss of hearing.
New Jersey—Permanent partial disability.
New Mexico—Permanent physical impairment likely to be an obstacle to employment.

New York—Permanent physical impairment likely to be an obstacle to employment.

North Carolina—Permanent disability or permanent injury sustained in service in the Army or Navy, or in employment other than that in which the second injury is received, provided such injury is at least 20 percent of the entire member. (Questionable whether this would apply to deafness.)

North Dakota—Injury incurred in course of different employment and regarding which claimant's physician had certified employee as being fit for employment. (This could apply to deafness.)

Oklahoma—Partial loss of use of a specific member such as is obvious to ordinary layman. (Questionable whether this would apply to deafness.)

Oregon—Known substantial preexisting disabilities equivalent to not less than 50 percent loss of function of an arm. (Questionable whether this could apply to deafness; but severe deafness in both ears might be considered an injury equally severe as loss of 50 percent of an arm.)

Puerto Rico—Any preexisting disability.

South Carolina—Permanent injury sustained in service in the Army or Navy or in another employ.

Utah—Permanent partial disability.

Washington—Bodily infirmity or disability from any previous injury or disease.

West Virginia—Definitely ascertainable physical impairment.

Wisconsin—Permanent disability which, if it had resulted from a work accident, would have entitled worker to 250 weeks of compensation (less 2½ percent for each year of age above 50, but with no reduction in excess of 50 percent).

Those States that do not have a second-injury statute should consider enacting one in order to prevent the application of the workman's compensation laws from making it difficult for handicapped persons to obtain employment. Those States that do have a second-injury statute, but which limit the application of the law only to certain types of first injuries, should consider broadening their statutes to have them cover all types of preexisting disabilities. A deaf person needs protection against discrimination in employment just as much as a person having any other type of disability.

SECTION 43

Unemployment Compensation Laws and the Deaf

When a person is laid off from his employment he generally files an application for unemployment compensation insurance benefits from his State agency. A deputy officer at the State agency usually explains to all such unemployed persons that in order to qualify for the benefits the person must make an active and continuous effort to find another job. He frequently tells the applicant: "You must keep looking for a new job every day and you must keep a list of the places to which you go."

The deaf person does not hear these instructions, and he sometimes gets the impression that he does not have to look for work continuously. The State unemployment compensation office may have a form in use in which the unemployed person is required to list a number of places where he has looked for work. Some require a list of at least eight places each month. The deaf person who has not been properly instructed may assume that he has to visit only a maximum of eight places per month. This conclusion is entirely incorrect. If a person states to a deputy official at a hearing, or at any other time, that he has been visiting only eight places of possible employment each month, it is likely that he will lose his compensation benefits since visiting such a small number of places does not constitute an active search for work within the meaning of such laws.

Deaf persons in this situation should be instructed that the unemployment compensation laws require them to engage in a very active and continuous search for work; that they should visit at least a few places of possible employment each day; and that they must keep a careful list of the names and addresses of the places to which they go. If the deaf person is illiterate, an attempt should be made to have someone make this list for him since without it he is likely to lose his compensation payments. This is a major problem affecting the deaf in regard to the application of the unemployment compensation laws.

SECTION 44

Vocational Rehabilitation

The Federal Government has a large, effective, and continuous program for the rehabilitation to suitable employment of physically or mentally handicapped persons, including the deaf. The program is a working partnership between the Vocational Rehabilitation Administration in the U.S. Department of Health, Education, and Welfare and the State rehabilitation agencies.

The VRA provides national leadership for the program, and gives technical assistance and grants-in-aid to the State agencies, other public organizations, and private nonprofit groups. The States provide the actual services for disabled persons.

Besides supporting the basic services of the State rehabilitation agencies on a matching basis, the VRA conducts a research and demonstration program to find new and better ways of rehabilitating handicapped individuals and a training program for professional rehabilitation personnel.

The following States have enacted legislation providing for the establishment and operation of State vocational rehabilitation programs in accordance with the Federal plan:

Alabama—Title 52, Sections 390 to 398.
Alaska—Sections 2A-1-11, 37-9-1 to 37-9-7.
Arizona—Sections 15-1053, 23-501 to 23-508.
Arkansas—Sections 80-2514 to 80-2523, 80-2540 to 80-2565.
California—Sections 7001-7027.
Colorado—Sections 145-3-1 to 145-3-9 to 145-1-1 to 145-1-6.
Connecticut—Sections 10-100 to 10-108.
Delaware—Sections 3301-3310.
Florida—Sections 229.25-229.50.
Georgia—Sections 32-2301 to 32-2321.
Hawaii—Sections 42-30 to 42-54.
Idaho—Sections 33-2301 to 33-2402.
Illinois—Title 23, Section 3431.
Indiana—Sections 28-4901 to 28-4949.
Iowa—Sections 259.1 to 259.8.
Kansas—Sections 72-4302 to 72-4316a.
Kentucky—Section 163.020.
Louisiana—Sections 17, 1991.
Maine—Chapter 41, Section 195-A.
Maryland—Article 77, Section 292.
Massachusetts—Chapter 64, Section 7.
Michigan—Section 15.841.

Minnesota—Section 124.62
Mississippi—Section 6504.
Missouri—Section 162.010.
Montana—Section 41–801.
Nebraska—Section 79–1446.
Nevada—Section 388.410
New Hampshire—Section 186:6.
New Jersey—Sections 34.16–20.
New Mexico—Sections 73–6–2.
New York—Section 1001.
North Carolina—Sections 115–243.
Ohio—Sections 3303.01 to 3303.35.
Oklahoma—Title 70, Sections 14A–1 to 14C–9.
Oregon—Sections 344.510 to 344.990.
Pennsylvania—Title 43, Sections 681.1 to 681.11.
Rhode Island—Sections 16–18–1 to 16–18–3, 16–27–1 to 16–27–11.
South Carolina—Sections 71–271 to 71–285.
South Dakota—Sections 15.08A01 to 15.08A13.
Tennessee—Sections 49–2701 to 49–2706, 49–2801 to 49–2808.
Utah—Sections 53–17–1 to 53–17–22.
Vermont—Title 16, Sections 3011–3018.
Virginia—Title 22, Section 324.1.
Washington—Chapter 28.10.
West Virginia—Sections 1872(3)–1872(13).
Wisconsin—Chapter 41.71.
Wyoming—Sections 21–307—21–317.

The VRA and the State departments of vocational rehabilitation publish pamphlets and booklets explaining the vocational rehabilitation program. These include "Opportunities for the Deaf and the Hard of Hearing."

The present Federal-State program operates under the Vocational Rehabilitation Act as amended by Public Law 565. The importance of this work cannot be overstated. The activities of the Federal Vocational Rehabilitation Administration form the foundation of much of the work that is being done in this country for the advancement of the deaf.

SECTION 45

State Laws on the Education of the Deaf

There is a very large number of State laws dealing with the education of the deaf, and many of these are extremely complicated. The volume of such laws runs to thousands of pages. The laws on the subject in each State in the Nation are briefly summarized in the following pages.

It should be kept in mind that there is no necessary relationship between the organization of the State laws and the quality of the educational services that are actually provided. A State which has only a broad statute dealing with the general education of the deaf may provide excellent educational services if the school authorities give proper attention to the task. All of the necessary activities and services can be organized at the administrative level and need not have a specific foundation in law. On the other hand, a State with a large and complicated body of statutes which create numerous boards, bureaus, agencies, and officers does not necessarily provide superior educational services.

A study of these State laws on the education of the deaf provides an excellent survey of the various programs followed in different States, the different solutions that have been attempted to common problems, the type of statutes that the legislatures have accepted, possible methods of organization, and other matters of interest.

Some States have provisions in their constitutions dealing with the education of the deaf. These provisions are usually of little benefit. When they are broad and general, they are too vague to be enforceable and merely indicate the general interest and sympathy of the constitutional convention in this subject. When they are specific, they are likely to become outdated with the passage of time and may later prevent the State legislature from making needed changes since State constitutions can usually be amended only with great difficulty. It is therefore generally undesirable to have the State constitution contain measures dealing with the education of the deaf.

Most States have a statute dealing with the operation of the state school for the deaf. Such statutes may be broad and general in nature, or they may be highly detailed. The administration of the school may be placed in the hands of a superintendent appointed by the Governor or by a state superintendent of schools; or it may be placed in the hands of a board of trustees or a board of regents, which appoints the superintendent. Such questions of organization may be important if a conflict arises between the superintendent of the school and the state administrative officials.

The statute governing the operation of the state school for the deaf may provide that students from other States may attend the school upon payment of the costs of maintenance of the pupil. This is an excellent provision. Likewise, when it is in the best interests of the pupil, the law may provide that the school authorities may send a pupil to a school in another State and make appropriate payment to that school. Such laws facilitate the proper placement of pupils in schools best suited to their needs, regardless of the State of residence.

The state law may require that certain subjects be taught, such as printing, farming, and the like. The law may require that the superintendent must know the language of signs. It may require that the oral method be used, or that deaf children must be segregated in special classes or schools. Many laws specifically cover such matters as free medical care, free clothing, and free transportation to and from school. Other state laws may require that the parents pay for certain costs in the school. The state law generally specifies what type of children may be admitted, and the age limits (up to 35 in Louisiana); and it may provide for preschool training, postschool training, correspondence courses, and the instruction of parents.

There are frequently special statutes governing the education of those who are both deaf and blind, providing that they may be sent to schools outside of the State, with payment, up to certain limits, to be made by the State of residence.

The statutes may provide for the inspection of the school for the deaf by a board of visitors or some equivalent agency. Or inspection of the institution by the usual authorities may be waived. The State of Indiana prohibits students at the school for the deaf from being hired out for labor. A statute in Wisconsin prohibits abusing or neglecting deaf students.

Many States have elaborate laws setting up special boards or commissions to advise on the education of the deaf. Such boards may report directly to the Governor of the State or to some other administrative officer or agency.

Some States have special laws dealing with scholarships for prospective teachers of the deaf, the furnishing of instruction by the state university, and the certification of teachers of the deaf based on their training and experience.

Most States have programs of instruction for handicapped children which are administered in cooperation between the state agency in charge of education and the local school authorities. There are often complicated provisions as to when local school boards must set up special classes for the deaf, the payments made by the State (usually from Federal funds) to local boards for this purpose, and the transportation of children from one school district to another. Provision may be made for private tutoring and home visitation where this is necessary. The laws of Pennsylvania, Nebraska, Ohio, and some other States provide that instruction must be by the oral method when this is possible.

Since a State generally has only one school for the deaf, it may be necessary for the child to reside at the school. This brings up the problem of the custody of the child and the need for a compulsory school attendance law. The parents may object to surrendering the custody of the child for long periods while he resides at school. Most States have laws which permit the parents to keep the child at home if they provide satisfactory private instruction.

Some States provide for the college education of deaf students outside of the State of residence, the costs to be paid by the State.

Almost every State requires a census of deaf children to be taken by local school authorities and the results of this census are transmitted to the state school for the deaf or to an equivalent authority. The purpose of this is to make sure that children who need special instruction are not wrongfully kept in the local public schools.

In order to prevent parents from hiding deaf children and refusing to send them to school, some States require private physicians or others to report all deaf children of whom they have knowledge to the educational authorities.

Almost every State requires that hearing tests be made of every school child in order to detect those who are deaf and are not aware of it. Most States do not require the test if the parent object on religious or constitutional grounds.

The following shows the citations to the statutes on these subjects in each State.

Alabama:

Title 52, Sections 553, 554—Provide for examinations of all schoolchildren to discover those who are deaf.

Title 49, Sections 101 to 108—Empower the state board of education to locate and treat deaf children.

Title 52, Sections 519 to 532—Detail provisions for the organization and management of the Alabama Institute for the Deaf and Blind and the education of deaf children.

Alaska:

Sections 37-7-41 to 37-7-57—Provide for special classes for the education of handicapped children, the teaching of lipreading, speech correction, and hearing therapy by special teachers. Exempt a handicapped child from the compulsory attendance laws if he is privately educated by the parents, or if a physician certifies that child cannot attend any school.

Arizona:

Constitution, Article 11, Section 1—States that the legislature shall provide for the education of the deaf.

Sections 15-801 to 15-838—Provide for the establishment and operation of the Arizona State School for the Deaf and Blind.

Arkansas:

Constitution, Article XIX, Section 19—States that the general assembly shall provide for the education of the deaf.

Sections 80-2301 to 80-2425—Provide for the establishment and operation of the Arkansas School for the Deaf. Require county sheriffs to keep a record of all deaf-mutes between ages of 9 and 30. Provide that the school board of directors is the guardian of orphan deaf-mutes. Provide for aid to indigent deaf students at college.

California:

Sections 25551-25610—Provide for the establishment and operation of two state schools for the deaf. Grant free medical services. State that the department of education may pay the expenses of any deaf student attending Gallaudet College in Washington, D.C.

Sections 12801-12802, 12156 to 12454—Concern the compulsory school attendance law applicable to deaf children.

Section 25651—States that the department of education shall establish and maintain a preschool and kindergarten service for deaf children.

Section 25653—States that the director of education may establish and maintain a testing and diagnostic center for deaf children.

Section 264—Provides that the director of education shall furnish consultant services on the education of hard-of-hearing children.

Section 25652—Directs that the department of education may offer courses of instruction to parents of deaf children.

Sections 6801 to 6821—Provide that school boards may make special provision for the education of handicapped children.

Section 23863—Authorizes the department of education to establish a teacher-training program for teachers of the deaf.

Sections 18060 to 18062—Concern state aid for the transportation of deaf children to special schools.

Sections 249-271, 1685 to 1686—Provide for testing and diagnostic services to deaf children.

Colorado:

Constitution, Article VIII, Section 5—Declares the Colorado School for the Deaf to be a state institution, subject to state control.

Sections 16-2-1 to 16-2-31—Provide for the operation of the state school for the deaf and blind. State that the superintendent must have an easy and ready use of the language of signs. Make special provision for the education of students at Gallaudet College, Washington, D.C.

Sections 123-20-16 to 123-20-17—State the compulsory education law for deaf children, subject to certain exceptions.

Sections 123-21-16 and 123-21-17—Provide for hearing tests of all students. State that if a parent does not provide medical treatment for deafness, the state bureau of child and animal protection shall be notified.

Sections 123-22-1 to 123-22-17—Permit school districts to provide special classes for the education of handicapped children.

Connecticut:

Sections 10-205 to 10-212—Require hearing tests for all students in public schools. Make these records confidential. State that parents must provide medical treatment for deaf children where necessary.

Sections 10-312 to 10-316—Declare that the board of trustees of the Mystic Oral School for the Deaf shall be advisors to the state board of education. Allow the state board of education to send deaf students to a private school for the deaf and pay the costs thereof.

Section 10-75—Provides for the special education of exceptional children.

Sections 10-76 to 10-84—Provide for special education of physically handicapped children.

Section 10-295—Permits the board of education to pay $3,500 per year to send a blind and deaf child to a special school outside of the State.

Delaware:

Sections 3101 to 3108—Require the state board of education to provide for the special education of handicapped children.

Sections 2702, 2703, 2705—Contain the compulsory education law, with certain exceptions, for the handicapped.

Section 14-122—Provides for physical examinations of all schoolchildren.

Florida:

Constitution, Article XII, Section 1—Declares the State shall support necessary institutions for the deaf.

Sections 242.33 to 242.40—Provide for the management and operation of the Florida School for the Deaf and Blind.

Section 232.06(1)—States that deaf children must attend the Florida School for the Deaf and Blind if the public schools are not suitable for them.

Section 228.15—States that the county board of special schools may provide for the rehabilitation of atypical dependent children. Directs the Florida Crippled Children's Commission and other agencies to aid in the special education of exceptional children.

Section 230.23(6)(f)—Provides for hearing tests for all schoolchildren.

Sections 232.29 to 232.31—Provide for physical examinations for all children which may be refused by parents on religious grounds.

Section 232.13—Requires transmittal of information concerning deaf children to the Florida School for the Deaf and Blind.

Georgia:

Sections 32-2801 to 32-2829a, and 35-801 to 35-810—Provide for the operation of the Georgia School for the Deaf.

Sections 32-2101a to 32-2105a—Permit state and local boards of education to establish special classes for the deaf.

Section 32-441—Allows the state board of education to send deaf students out of the State for special education and pay the costs thereof.

Hawaii:

Sections 40-9, 40-10, and 40-12—State that totally deaf children must be sent to the territorial school for the deaf and blind unless skilled private instruction is provided.

Sections 43–20 to 43–27—Provide for special classes and services for exceptional children.

Idaho:

Section 33–3401—Provides for operation of a state school for the education of the deaf. Makes it compulsory for deaf children to be educated there, with certain exceptions.

Constitution—Article X, Section 1—Declares that institutions for the deaf shall be established and operated as provided by law.

Sections 33–2101 to 33–4107—Require each public school district to provide for the education of handicapped children.

Illinois:

Sections 10–22.7 and 34–17 of Chapter 122 and Sections 14–1 and 14–12, Section 10–22.16 of Chapter 122—Authorize school boards to establish classes for the education of handicapped children. Contains the compulsory education law.

Title 91½, Section 100–38, and Title 23, Section 1210—Direct the department of education to operate residential schools for the education of the deaf.

Section 100–4, Title 91¼—Places the Illinois School for the Deaf under the supervision of the department of mental health.

Title 91½, Section 100–37—States that the department of mental health shall provide for the education of deaf children.

Title 23, Sections 3321, 3322—Direct the board of education for the blind and the deaf to provide for college education of suitable deaf persons.

Chapter 122, Section 27–8—Requires physical examinations of all students except those who object on constitutional grounds.

Indiana:

Constitution, Article IX, Section 1—States that the general assembly shall provide by law for the education of the deaf.

Sections 22–108 and 22–901 to 22–916—Provide for the operation of the Indiana School for the Deaf.

Sections 28–505 and 28–517—Have the compulsory school attendance law applicable to deaf children.

Sections 22–1001 to 22–1006—Prohibit the hiring out of pupils in state schools for the deaf under any form of contract.

Sections 28–3501 to 28–3533—Require hearing tests of all schoolchildren and authorize local school officials to establish special classes for the deaf.

Sections 28–3601 to 28–3609—Provide for hearing tests of all schoolchildren and the furnishing of medical treatment where needed.

Sections 28–3534 to 28–3545—Create a hearing commission to coordinate the activities of various groups. Authorize oral training centers for deaf children. Provide that parents may refuse to send a deaf child to such an oral training center.

Iowa:

Sections 262.7, 270.1 and 270.8—Provide for the operation of the state school for the deaf.

Sections 295.1 and 295.5—Authorize schools to provide special instructors for the deaf.

Sections 299.18 to 299.23—Provide for compulsory education for deaf children, making certain exceptions.

Section 255.28—Provides for free medical care for deaf students at the state school.

Sections 281.1 to 281.10—Create a division of special education to supervise the education of the deaf.

Section 299.17—Requires tax assessors to furnish a census of the deaf to the secretary of the state board of education.

Kansa[illegible]

Sections 76–1001 to 76–1012—Establish the state school for the deaf.

Sections 76–6104, 76–2601, 79–3621—Levy an annual tax for the support of the state school for the deaf.

Sections 72–5301 to 72–5301b, 39–111—Set forth the compulsory school attendance law for deaf children, making certain exceptions.

Sections 72–5360 to 72–5368b—Permit school districts to provide special instruction for deaf children, and to send them out of the State for such instruction.

Section 72–4807—Requires school boards to take a census of all schoolchildren.

Constitution, Article 7, Section 1—Provides for the establishment of a public institution for the deaf.

Constitution, Article 7, Section 6—Levies a permanent tax for a building fund for institutions caring for the deaf and dumb.

Kentucky:

Section 167.015 et seq.—Provide for the management and control of the Kentucky School for the Deaf.

Sections 167.210 to 167.240—Permit the state department of education to send deaf-blind children to any school, including schools outside of the State.

Section 157.200 et seq.—Provide for special classes for handicapped children.

Sections 167.090, 167.130, and 167.990—State the compulsory school attendance law for deaf children, making certain exceptions.

Louisiana:

Section 17–1941 et seq.—Provide for the education of handicapped children by parish school boards, and also for the education of exceptional persons up to 35 years of age.

Section 17–221, et seq.—Provide for compulsory education, with certain exceptions, for handicapped children.

Section 17–10—Declares that state schools for the deaf are to be administered by the state board of education.

Sections 17–2111 and 17–2112—Require hearing tests of all schoolchildren.

Maine:

Chapter 27, Sections 158 et seq.—Provide for the establishment and operation of the Governor Baxter State School for the Deaf, and set forth a compulsory school attendance law.

Section 207–A of Chapter 41—Provides for special classes for handicapped children in public schools, to be supervised by the commissioner of education.

Chapter 41, Sections 62 and 63—Provide for hearing tests for all schoolchildren.

Maryland:

Article 77, Section 43 et seq.—Provide for the operation of the Maryland School for the Deaf under the authority of the state superintendent of schools.

Article 30, Section 1—Gives the Governor authority to require the instruction of certain deaf children in the state school for the deaf.

Article 77, Section 235—Has the compulsory school attendance law that applies to the deaf, allowing certain exceptions.

Article 77, Section 239—States that local boards of education shall provide special education for handicapped children under standards set by the state department of education.

Article 77, Section 67—Provides for a census of handicapped children.

Article 77, Sections 138 et seq.—Provide for hearing tests of all schoolchildren; and permit school authorities to establish special classes for defective children.

Massachusetts:

Constitution, Articles of Amendment No. XLVI, Section 3—Permits the State to pay private institutions for the education of the deaf.

Chapter 69, Sections 26 et seq.—Authorize the operation of special schools for deaf children and the use of special classes in other schools.

Chapter 71, Sections 46A et seq.—Permit school authorities to provide special instruction for handicapped children.

Chapter 76, Section 2A—Provides for compulsory education for deaf children, subject to certain exceptions.

Chapter 69, Sections 29A et seq.—Direct the division of special education to supervise all special education in the State.

Chapter 71, Sections 56 and 57—Provide for hearing tests for all schoolchildren.

Michigan:

Constitution, Article XI, Section 15—States how institutions for the deaf shall be supported.

Section 15.1401 et seq.—Provide for the operation of the state school for the deaf. Prohibits the school to be classified as a charitable institution.

Section 15.3771 et seq.—Authorize school district to furnish special education for the deaf under requirements set by the superintendent of public instruction.

Section 15.3747 et seq.—Provide for compulsory education for the deaf, making certain exceptions.

Section 15.3947—Directs schools to make a census of handicapped children.

Minnesota:

Sections 248.01 to 248.09—Provide for the operation of the state school for the deaf. Set forth a compulsory school attendance law, allowing certain exceptions.

Sections 120–03 to 120–18—Direct every school district to provide special education for handicapped children under the rules of the state board of education.

Section 144.33—Requires physicians to report handicapped children to the State.

Mississippi:

Constitution, Article 8, Section 209—Makes it the duty of the legislature to provide for the education of the deaf.

Section 6785 et seq.—Provide for the operation of the state school for the deaf.

Section 6631–02 et seq.—Provide that the state board of education shall carry out a program for handicapped children.

Sections 6111 to 6114—Permit municipal school districts to employ nurses and to provide for a medical examination of all schoolchildren.

Missouri:

Sections 161.170, 163.310 et seq.—Direct the state board of education to adopt special education programs for handicapped children.

Section 177.010 et seq.—Provide for the operation of the state school for the deaf under the state board of education.

Section 177.090 et seq.—Provide for the compulsory education of deaf children, permitting certain exceptions.

Section 164.030—Requires school districts to enumerate all deaf children and certify the list to the superintendent of the state school for the deaf.

Montana:

Constitution, Article X, Section 1—Requires that institutions for the deaf shall be supported by the State.

Section 80–101 et seq.—Provide for the operation of a state school for the deaf and blind. Require the superintendent to have a working knowledge of the language of signs. Contain a compulsory school attendance law for the deaf. State that the superintendent shall obtain or act as an employment officer and school fieldworker.

Section 75–5001 et seq.—Direct school districts to provide special education for handicapped children.

Section 75–1406—Authorizes school districts to provide tutorial services where necessary.

Section 75–1401 et seq.—Provide that the state superintendent for public instruction shall supervise educational facilities for handicapped children.

Section 80–110—Requires school districts to take a census of deaf children.

Sections 75–1903 and 75–1904—Require school districts to take a census of handicapped children.

Nebraska:

Section 79–1901 et seq.—Provide for the operation of the Nebraska School for the Deaf under the state department of education.

Section 79–1409 et seq.—Permit school districts to operate special day schools for the deaf where the oral method must be used.

Section 601 et seq.—Allow deaf-blind children to be educated out of the State.

Section 79–204—Has the compulsory school attendance law for the deaf.

Sections 79–4, 133 et seq.—Require hearing tests for schoolchildren.

Section 79–318—Requires county superintendents of schools to compile a census of deaf-and-dumb children.

Nevada:

Constitution, Article XIII, Section 1—Provides that institutions for the benefit of the deaf shall be supported by the State.

Section 395.010 et seq.—Declare the superintendent of public instruction shall provide for the education of the deaf in any suitable institution, including private institutions, inside or outside of the State.

Section 388.440 et seq.—Provide that school districts may make special provisions for the education of handicapped children.

Section 392.420—Requires hearing tests of all schoolchildren.

New Hampshire:

Section 186:11 et seq.—Require the state board of education to administer plans for the education of the deaf.

Section 186:41 et seq.—State the compulsory school attendance law for handicapped children. Provide that no public official may take charge of any child over the objection of the parents.

Section 132:16—Requires parents, doctors, and teachers to report all deaf children to the secretary of the state board of health.

Section 200:21 et seq.—Require hearing tests of all schoolchildren.

New Jersey:

Section 18:16-1, et seq.—Provide for the operation of a state school for deaf children.

Sections 18:14, 71:17 et seq.—Provide for special education of handicapped children by school districts in cooperation with the state board of education.

Section 30:1-15—Gives the state board of control of institutions power to visit and inspect all private institutions for the deaf.

Section 9:14A-1—Provides for hearing tests of schoolchildren.

Section 18:14-57—Requires medical examinations of schoolchildren; but they are not required if parents object on religious grounds.

New Mexico:

Constitution, Article XII, Section 11—Confirms that the state school for the deaf is a state educational institution.

Section 123—Provides for the operation of the New Mexico School for the Deaf. States that graduates of the school may have their undergraduate college expenses paid for by the State. Requires the board of regents of the school to cooperate with other agencies serving the deaf. Contains a compulsory school attendance law for the deaf. Requires that clerks of all school districts shall report deaf children in their districts.

New York:

Constitution, Article VII, Section 8—Declares that nothing in the constitution shall prevent the legislature from providing for the education of the deaf.

Section 4201 et seq.—Provide that the commissioner of education may visit any school for the deaf and report to the legislature. Provides for state schools for the deaf and for the deaf-blind. Provide for aid to deaf students attending college.

Section 4403 et seq.—State that school districts shall provide special education for handicapped children with the help of the department of education. Permit handicapped children to be sent out of the State for special education where necessary.

Section 2580 et seq.—Require physicians, nurses, parents, and others to report all deaf children to the commissioner of public health. Provide for medical services where necessary.

Section 901 et seq.—Provide for hearing tests for schoolchildren.

Section 3241—Provides for a school census of all handicapped children.

Constitution, Article XVII, Section 2—Provides that state institutions for the education of the deaf are exempt from inspection by the state board of social welfare.

North Carolina:

Section 116-105 et seq.—Provide for the management of state schools for the deaf.

Section 115-200—Provides that the state superintendent of public instruction shall organize a program for the special education of the handicapped and make payments to local schools with such programs.

Section 115-172 et seq.—Require compulsory education for deaf children.

Section 115-165—Provides for medical examination for children who are unable to attend local schools due to physical handicaps.

Section 115-161—Provides for a census of the school population, and makes a false statement as to the physical condition of a child a crime.

North Dakota:

Constitution, Article XIX, Section 215—Provides that the school for the deaf shall be permanently located at Devils Lake.

Constitution, Article IX, Section 159—States that the principal of all funds received for a deaf-and-dumb asylum shall be kept intact and only the interest used.

Section 54-23-01—Places the state school for the deaf under the control of the board of administration.

Section 25-07—Provides for the operation of the school for the deaf.

Section 15-59—Provides for an advisory council on special education to be named by the state board of education to aid in the administration of special education programs for handicapped children.

Section 15-47-34—Allows deaf children to be sent outside of the State for education if there are no adequate facilities within the State.

Sections 15-34-02 and 15-34-03—State the compulsory education law for deaf students.

Section 15-47-13—Requires census of deaf children by school authorities.

Ohio:

Constitution, Article VIII, Section 1—States that institutions for the benefit of the deaf shall always be supported by the State.

Sections 3325.01 to 3325.07—Provide for the operation of the state school for the deaf. Put classes for parents, nursery schools, and correspondence instruction, under the state board of education.

Sections 3323.01 to 3323.15—Authorize special education classes for the deaf. Provide that the oral system must be used, with certain exceptions.

Sections 3321.01 to 3321.04—Provide for compulsory school attendance for deaf children, allowing certain exceptions.

Sections 3313.68 to 3313.74—Require hearing tests for schoolchildren. Declare that a child need not be examined if a parent objects.

Sections 3321.24 to 3321.38—Require an annual enumeration of deaf children which must be made public.

Oklahoma:

Constitution, Article XIII, Section 2, and Article XXI, Section 1—Declare institutions for the education of the deaf shall be supported by the State.

Sections 1731 to 1744 of Title 70—Provide for the operation of the Oklahoma School for the Deaf under a board of trustees. Contain a compulsory school attendance law.

Title 10, Section 201-207.7, and Title 62, Section 165.166—Provide for the operation of the Taft State Home for Negro Deaf Children under the Oklahoma Public Welfare Commission and a board of regents.

Title 70, Sections 13-1 to 13-8—Permit school districts to provide special education for exceptional children.

Title 70, Sections 1762 and 1763—Authorize the state board of education to make hearing tests and teach lipreading.

Oregon:

Sections 346.010 to 346.050—Provide for the operation of the Oregon State School for the Deaf.

Section 346.070—Provides for financial assistance in college to deaf students of Oregon.

Sections 343.234 to 343.304—Require district school boards to provide special education for handicapped children, under rules of the state board of education.

Sections 339–010 to 339.990—Contain the compulsory education law for deaf children.

Sections 329.080, 329.090, and 332.545—Require a census of deaf children by school authorities.

Pennsylvania:

Title 24, Sections 2601 to 2624—Provide for the operation of an institution for the deaf. Direct that pupils shall be taught by the oral method unless incapable of taking such instruction.

Title 76, Sections 1071 to 1072—Establish an oral school for the deaf.

Title 14, Sections 13–1371 to 13–1382—Authorize school boards to provide for special education for deaf children.

Title 24, Section 25–2509—Sets forth directions for the support of classes for exceptional children.

Title 71, Section 353—Provides for vocational education for deaf children.

Title 24, Sections 13–1381 to 13–1382—Provide for financial aid for higher education for deaf students in schools approved by department of public instruction.

Title 24, Sections 14–1401 to 14–1422—Require hearing tests of all students.

Rhode Island:

Sections 16–26–1 to 16–26–11—Provide for the operation of the state school for the deaf.

Sections 16–24–1 to 16–24–6—State that the school committee of each city or town is required to provide special education for handicapped children. Allow the board of education to provide scholarships to prospective teachers of handicapped children.

Sections 16–3–1 to 16–3–3—Permit communities to form regional school districts in order to provide better education for the handicapped.

Sections 16–21–1 to 16–25–7—Provide for financial aid for the higher education of deaf students.

Section 16–14–6—Grants scholarships for teachers of handicapped children.

Sections 16–21–8 to 16–21–11—Require hearing tests for all students.

Sections 16–18–1 to 16–18–5—Provide for a census of deaf by school committees.

South Carolina:

Constitution, Article II, Section 8—Authorizes the general assembly to provide for the South Carolina School for the Deaf and Blind.

Sections 22–451 to 22–460—Provide for the operation of the South Carolina Institution for the Education of the Deaf and Blind under a board of commissioners.

Sections 21–295 to 21–295.7—Authorize school districts to provide special education for the handicapped.

Sections 22–521 to 22–525—Provide for the operation of the South Carolina Opportunity School.

Sections 21–753 to 21–755—Require medical examinations of all students, with the results of the examinations to be confidential.

South Dakota:

Constitution, Article XIV, Section 2—Provides for the control of the state school for the deaf.

Sections 55.4101 to 55.4204—Provide for the operation of the state school for the deaf. Contain the compulsory school attendance law.

Sections 15.3001 to 15.3020—Require school districts to provide for special education for the handicapped.

Sections 15.3201 to 15.3202, and 15.9914—Contain a compulsory school attendance law for the deaf.

Tennessee:

Sections 49–3101 to 49–3112—Provide for the operation of the Tennessee School for the Deaf. Provide for a scholarship fund to aid higher education of the deaf.

Sections 49–2901 to 49–2911—Provide for special education for the handicapped by local school systems and the state board of education.

Sections 49–2201 to 49–1913—Provide for transportation of handicapped students by local school boards.

Sections 49–1708 to 49–1710—Set forth the compulsory school attendance law.

Texas:

Constitution, Article 7, Section 9—Provides for a permanent fund for the support of schools for the deaf.

Article 3202, Civil Code—Lists the rules of the admission to the schools for the deaf.

Articles 3221–3221a, Civil Code—Govern the operation of the school for deaf and blind for colored youths and colored orphans.

Articles 3203 and 3205, Civil Code—States that certain students at the school for the deaf shall be taught printing.

Articles 3204, 193.609, Civil Code—Permit public printing contracts for the State to be executed at the school for the deaf.

Article 2889b, Civil Code—Authorizes teaching certificates for instructors of deaf children.

Article 3222b, Civil Code—Provides for the operation of the state schools for the deaf and for county day schools for the deaf.

Article 2675–2, Civil Code—States that deaf-blind children may be sent to schools outside of the State.

Article 2893, Civil Code; Article 298, Penal Code—Sets forth the compulsory school attendance law, making certain exceptions.

Utah:

Sections 64–3–1 to 64–3–12 and 64–3–19 to 64–3–28—Provide for the operation of the Utah School for the Deaf under a board of trustees. Contain the compulsory school attendance law, stating certain exceptions. Provide for an advisory council.

Sections 53–18–1 to 53–18–10—Provide for special education of handicapped children by local school districts; a census of handicapped children by local school authorities; the use of day-care centers for those of preschool age and postschool age; the cooperation of numerous agencies, and the establishment of an advisory committee for handicapped children.

Sections 53–26–1 to 53–26–7—Provide for the operation of special schools for exceptional children, and transfers to such schools.

Sections 53–22–1 to 53–22–7—Require hearing tests of all schoolchildren.

Section 56–6–12—Requires a census of deaf children by school authorities.

Vermont:

Title 16, Sections 2941 to 2952—Provide for special education for handicapped children and create an advisory council. Provide for the appointment of a director of special education; for the activities of the state board of education; and for transportation of handicapped children.

Title 16, Sections 1121 to 1124—State the compulsory school attendance law with exceptions.

Title 16, Sections 1382 to 1386 and 1421–1422—Require hearing tests of all schoolchildren. Provide that no test shall be given if a parent objects.

Virginia:

Title 23, Sections 156 to 180—Provide for the operation of the Virginia School for the Deaf and Blind; establish a board of visitors; and provide for a separate school for the deaf within the institution.

Title 25, Section 45—Declares that the consent of the general assembly is required for the acquisition of lands for an institution for the deaf.

Title 22, Sections 9.1 to 9.3—Provide for a special education program for handicapped children and an advisory council.

Title 22, Sections 275.1 to 275.25—Require hearing tests of all schoolchildren. Contain a compulsory school attendance law for deaf children, subject to certain exceptions.

Title 22, Section 227—Directs that a census shall be taken of deaf persons.

Washington:

Chapter 72.40—Providese for the operation of a state school for the deaf. Requires a census of deaf children by school districts. Contains a compulsory school attendance law, making certain exceptions. Provides for transportation costs.

Chapter 28.13—Establishes a special program of instruction for handicapped children by local school districts in cooperation with the office of the superintendent of public instruction.

Chapters 28.31.030 to 28.31.050—Provide for a hearing tests of all schoolchildren.

West Virginia:

Sections 1898 to 1903—Provide for the operation of the West Virginia School for the Deaf. Require county tax assessors to make a census of deaf children in their districts.

Sections 1905(5) to 1905(9)—Permit county boards of education to provide special education for handicapped children, including home teaching. Provide that exceptional children may be sent to schools in other countiese when necessary. Direct the state superintendent of free schools to provide aid.

Section 1855(1)—Has the compulsory school attendance law for deaf children, making certain exceptions. Makes it a crime for anyone to attempt to induce a deaf minor to leave school. Provides for a census of deaf children by school authorities. Provides for the operation of the West Virginia School for the Colored Deaf.

Section 1783—Provides for medical examinations for all schoolchildren.

Section 1814—Provides for a census of all schoolchildren.

Wisconsin:

Chapters 41.72 to 41.74—Provide for the operation of the state school for the deaf.

Chapter 47.02—Directs the Wisconsin State School for the Deaf to operate farms under the direction of the state department of public welfare.

Chapter 41.01—Provides for the operation of day schools for handicapped children by local school districts. Provides for the operation of various boards and bureaus.

Chapter 37.10(2)—Requires the state college to furnish training for teachers of the deaf.

Chapter 41.01—Requires school official to make census of handicapped children.

Chapter 41.02 and 40.77—State the compulsory school attendance law for handicapped children.

Wyoming:

Sections 9.467 and 9.468 to 9.468.4—Provide for the operation of the Wyoming School for the Deaf.

Sections 21–318 to 21–322.—Give the state board of education general supervision over the education of the deaf. Authorize the employment of a field agent for work among the deaf.

Sections 21–7 and 21–248—State the compulsory school attendance law.

SECTION 46

State Welfare Services for the Deaf

The scope of general welfare services available to the deaf cannot be accurately determined from the statutes on record in a particular State. In many States there is a general law which applies to everyone who needs public assistance. The State department which administers this relief law may have special departments to deal with specific types of handicaps such as deafness. Since the matter is classified at the administrative level, the State laws will not indicate what services are actually available.

On the other hand, other States may have a large number of special statutes setting up commissions, departments, or agencies for the deaf, but in actual practice very little may be done in some of them due to lack of finance, personnel, or for other reasons.

Sometimes general welfare and relief measures are carried on at the county or local level, and the State laws will not indicate what is being done at the local level. In other cases the schools for the deaf, vocational rehabilitation departments, medical departments, or such agencies, may provide a considerable amount of assistance for those deaf persons who are in need. Such institutions may be operated under general laws that do not specifically mention the deaf. For all of these reasons the State laws generally cannot be relied upon to reflect the services that are being provided in a particular State.

However, as a matter of general interest, a list of State laws that specifically concern the deaf in the field of welfare and assistance follows:

Alabama:

Title 49, Sections 17 (9), (14) (d)—Aid to handicapped children and the permanently and totally disabled.

Arizona:

Sections 46-101 to 46-401—Research and service to crippled children, etc.

Arkansas:

Section 83-109—Welfare program for the physically handicapped.

Delaware:

Section 16-5304—Department for care of crippled children, etc.

Florida:

Section 409.03—Protection of handicapped children.

Georgia:

Section 23-2310—Special provision for deaf paupers.

Hawaii:

Sections 46-40 to 46-45, and 37-19—Program for crippled children, etc.

Idaho:

Sections 56-201 to 56-224a—Aid to the disabled.

Illinois:

Section 2132 of Title 91—Commission for Handicapped Children.

Section 128 of Title 91—Medical Center Commission to aid the deaf.

Indiana:

Sections 52-1908 to 52-1916—Creates Commission for the Handicapped.

Kansas:

Sections 39-923 to 39-944—Provides homes for the infirm.

Sections 39-702 to 39-709(a)—Program for the permanently and totally disabled.

Louisiana:

Section 46-981—Medical services to students of the Louisiana School.

Michigan:

Section 25.411—Medical aid to children.

Minnesota:

Section 256.971—Commissioner of Public Welfare to carry on research in regard to deafness.

Sections 256.01 to 256.96—Noninstitutional services for the deaf.

New York:

Section 34:1-69.1 et seq.—Department of Labor to promote the employment of the deaf.

New Jersey:

Section 34:16-1 et seq.—Commission for the handicapped.

New Mexico:

Section 13-1-1 et seq.—Assistance to the handicapped.

North Carolina:

Sections 143-279—Commission to aid employment of the handicapped.

North Carolina:

Section 95-70, et seq.—Department of Labor to promote the employment of the deaf.

Constitution Article XI, Section 10—Laws shall provide for the care of indigent deaf by the State.

Ohio:

Sections 3335.50 to 3335.55—Ohio State University shall promote the employment and rehabilitation of the handicapped.

Section 1743.05—Corporations organized for the purpose of providing a home for deaf persons may enter into contracts with counties or municipal infirmaries for the care of such deaf persons. The governmental body shall pay to the private corporation a sum equal to the per capita cost of maintaining residents in the county home or municipal infirmary. (This is an interesting and useful statute which might be helpful in other States.)

Oregon:

Sections 412.510 to 412.630—Aid to the disabled.

Pennsylvania:

Sections 2301 to 2305 of Title 62—Local governmental authorities may contract with any association in the State organized to provide a home or employment for deaf persons. (A useful provision.)

Rhode Island:

Section 23-5-4—A private physician who treats a deaf child must report his findings to the director of health.

South Carolina:

Sections 71-131 to 71-134—Assistance to the handicapped.

South Dakota:

Sections 53.39A01 to 55.39A12—Aid to the disabled.

Tennessee:

Sections 53-1901 to 53-1911—Medical aid to handicapped children.

Utah:

Sections 55-1-1 to 55-1-28—Assistance to the handicapped.

Constitution, Article X, Section 10; Article XIX, Sections 2 and 3—Provides for an institution for the deaf.

Vermont:

Title 18, Sections 2101 to 2107—Medical assistance and rehabilitation of the disabled.

Title 33, Section 437—Medical treatment for defective children.

Washington:

Sections 70.58-300 to 70.38.350—Private physicians must report disabled children to health department.

Section 72.05—Establishes Council for Children and Youth, and Division of Children and Youth Services.

West Virginia:

Constitution, Article XII, Section 12—Requires the legislature to make suitable provision for the mute when practicable.

Sections 626(1) to 626(5)—Provides for public assistance and rehabilitation.

Wisconsin:

Section 20.300—Annual appropriation to the Wisconsin Service Bureau of the Deaf of the Wisconsin Association of the Deaf. (An excellent provision which should be made by other States as well.)

Wyoming:

Section 9-173—Board of Charities is responsible for deaf dependent children.

A directory listing the public health officers and public health agencies of every State is available from the U.S. Government Printing Office, catalog No. FS 2.77/2:963, published in 1963. This covers also the state agencies that have been designated to administer the grant program of the Children's Bureau for Crippled Children's Services, and the grant programs of the Public Health Service.

SECTION 47

Federal Benefits for the Deaf

Federal Social Security Laws and the Deaf

The Federal Old-Age Survivors and Disability Insurance Program provides for disability payments in certain cases to person under 65 years of age who are disabled and unable to engage in any substantial gainful activity. The disability must have lasted for at least 6 months and it must be expected to continue for a long or indefinite period. The regulations issued by the program set forth examples of impairments which would ordinarily be considered as constituting such a disability. One of these example is:

> (9) Total deafness uncorrectible by a hearing aid.

Deaf persons who learn of the existence of this regulation sometimes assume that they can quit their jobs and apply for disability payments. However, this is incorrect. The presence of such total deafness may tend to indicate that there is a total disability, but in every case the deaf applicant will be required to prove that his handicap actually does prevent him from engaging in a gainful employment. In determining this question, the program will consider the extent and severity of the handicap, the individual's education, training, and work experience. If the deaf person has a prior history of gainful employment in spite of his handicap, it is very unlikely that disability payments will be made. However, as a deaf person becomes older and the normal restrictions of advanced age are added to his hearing handicap, a point may be reached where he will be considered to be disabled within the meaning of the law.

The decision as to whether such a person is disabled within the meaning of the law is generally made by the State vocational rehabilitation agency. Decisions of this agency can be appealed before a hearing examiner of the Federal Social Security Administration, and ultimately to the courts.

When a person receives old age or disability benefits or dies, payments may also be made under certain conditions to certain of his dependents. One class of such dependents consists of those who became severely disabled before they reached 18 years of age and have remained disabled since that time. Deafness is considered in determining whether such a dependent is severely disabled within the meaning of the law.

Some people do not understand that no benefits will be paid from the social security program until an application is filed by the person who is entitled to the benefits. These people often believe that payments are automatic and if they are entitled to them will be made by the social security agency without a request. It is, therefore, common to find elderly deaf persons who are entitled to benefits but who have never received them because no application was ever made. They may say that they know they are not entitled to benefits. But upon investigation it may be found that they have merely assumed this to be true from the fact that they had never received any payments. Such persons can be helped by putting them into communication with the social security agency and seeing that they file the necessary proofs and applications to obtain the benefits to which they are entitled.

The Federal Social Security Act provides for a number of special welfare services to be administered by cooperating State departments. This includes certain public assistance payments, medical care of the aged, child welfare services, services for crippled children, and certain public health services. Full information in regard to these services can be obtained from the Federal Social Security Administration. Every State has an agency which works on the administration of these Federal programs.

Captioned Films

Congress has provided for a loan service of captioned motion picture films for the deaf. This act of Congress, No. 85–905 of 1958, is set forth in Title 42, Sections 2491 to 2494 of the United States Code. This program prepares films in which the dialogue is printed on the film so that it can be read by the deaf. They are loaned free of charge to groups of deaf persons. The service is highly popular. Details of the program can be obtained from Captioned Films for the Deaf, U.S. Office of Education, Department of Health, Education, and Welfare, Washington, D.C. 20202.

Grants for Teachers of the Deaf

Congress has provided in title 20, sections 670 to 676, for grants to aid in the education of teachers of the deaf, and the activities of the Advisory Committee on the Training of Teachers of the

Deaf. This project will have important bearing on the education of the deaf in this country. Full details concerning the program can be obtained from the committee at the U.S. Office of Education, Department of Health, Education, and Welfare, Washington, D.C. 20202.

Gallaudet College

The Federal Government supports the operations of Gallaudet College located at Kendall Green in Washington, D.C. This is the only college in the world devoted exclusively to the education of the deaf at college level. Full details concerning this institution can be obtanied by writing to Gallaudet College, Kendall Green, Washington, D.C. 20002.

Federal Benefits for Deaf Veterans

Persons who became deaf due to service in the U.S. Military forces may be entitled to certain benefits. These are administered by the U.S. Veterans' Administration.

Veterans who suffered deafness or injury to the ears because of their military service may be entitled to hospitalization, outpatient medical services, hearing aids, and possibly to a monthly disability payment.

Veterans with a service-connected deafness are entitled to vocational rehabilitation services, certain preferences for civil service positions with the U.S. Government, and preference in job-finding assistance by government employment offices. They may also have certain reemployment rights with their previous employers.

Deaf children of certain veterans may be entitled to special training including speech and lipreading training, under certain conditions.

Veterans who are permanently and totally disabled, even though the disability is not service-connected, are entitled to pensions and domiciliary care in certain cases. Deafness is considered in determining whether such permanent and total disability exists.

When a deaf veteran is unaware of the benefits to which he may be entitled, he should be put in communication with the Veterans' Administration, which will fully explain the services available. Attempting to prove whether deafness was or was not caused by military service is both a legal problem and a medical problem.

Other Federal Benefits for the Deaf

Federal benefits for the deaf in the fields of vocational rehabilitation and education of deaf children are covered in the separate topics elsewhere in this book.

The State-Federal programs in this field, based to a great extent upon Public Law 565 of 1954, are extremely important and significant, and constitute one of the main influences for the improvement of the deaf in this country. Full information in regard to the wide program administered under the Federal law can be obtained from the Vocational Rehabilitation Administration, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201.

A directory listing all agencies designated to administer the grant programs of the Public Health Service and the grant program of the Children's Bureau for Crippled Children's Services, the organization of the Federal Public Health Service, is available from the U.S. Government Printing Office as catalog No. FS 2.77/2:963, published in 1963, with 101 pages.

SECTION 48

Discrimination against the Deaf by Employers

Some employers are very reluctant to hire deaf or other handicapped persons. Many reasons may be given for this. The employer may believe that such persons will not produce as much as other workers, that they will be prone to have accidents, that it will be too difficult to communicate with them, or that other workers will object to their presence (see "Employer Resistance to Hiring the Handicapped", 1955 Survey by the President's Committee on Employment of the Physically Handicapped).

There is little or no foundation for any of these statements. Studies made by the U.S. Department of Labor have consistently shown that the handicapped produce more and have a lower accident rate than normal persons.

Some employers also state that they are reluctant to employ deaf persons because they are afraid that if one should be injured this would cause their Workman's Compensation insurance premiums to be raised. Where a deaf person is placed in a proper position, the studies made by the U.S. Department of Labor show that there is a lower accident rate than usual (Bulletin No. 923, Bureau of Labor Statistics). Therefore, there is little danger of having more accidents than usual. However, it is true that under the Workman's Compensation laws now in force in many States, an injury to a deaf employee might be more costly to the employer than the same injury to a person who is not deaf. This is due to the effect of the second injury concept explained in Section 42 of this book. This factor can be eliminated by means of the so-called second-injury statutes. If this factor is thus eliminated, then there is no valid reason remaining for employers to refuse to hire deaf persons for proper positions.

If there is no valid reason for employers to refuse to hire the handicapped, then it is legally possible to enact legislation making it illegal to discriminate against the handicapped in matters of employment. Such legislation is constitutional under the general welfare powers of the legislature, in the same manner that statutes forbidding discrimination in employment by reason of race or religion have been held valid.

House bill No. 385 was introduced before the 73d Illinois General Assemlby providing, in part, as follows:

> Section 2—No person shall be refused or denied employment in any capacity on account of physical handicap, nor discriminated against in any manner by reason thereof, so long as such physical handicap does not interfere with the person's ability to perform the work for which he is hired, by any person, firm or corporation or by any agent, employee or appointee of any State office, department, division, branch or commission or governmental subdivision of the State or of any county, municipal or political subdivision thereof.
>
> Section 3—Whosoever violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be imprisoned in the county jail for not less than 30 days nor more than 6 months or shall be fined not less than $50.00 nor more than $100.00, or both so imprisoned and so fined.

Illinois has a statute relating to the employment of handicapped people in the State civil service system. Chapter 24½, section 38b3 imposes the following obligation upon the Illinois Civil Service Merit Board:

> (9) To provide by its rules for employment at regular rates of compensation of physically handicapped persons in positions in which the handicap does not prevent the individual from furnishing satisfactory service.

The State of Maryland has a statute as follows:

> *Art. 64A § 12 Physically handicapped persons in civil service*—Prohibits discrimination in examination or qualification for positions in the classified service of the State on ground of age or physical defect, provided that in the latter case the applicant shall produce a physician's certificate to the effect that he is not suffering from any physical defect that would interfere with performing the duties of the position which he is seeking.

The State of California has a rather unusual statute providing for the replacement of a hearing aid for deaf civil service employees:

> *Education Code § 19258 State civil service, damages*—Permits the department in which an employee is employed to pay the cost of replacing or repairing hearing aids worn or carried when damaged in the line of duty without fault of the employee. If the hearing aids are damaged beyond repair, the department may pay the actual value of the hearing aids as is determined by the Department of Finance.

Statutes which prohibit discrimination against the handicapped in matters of employment are useful, particularly in regard to government civil service positions, but as a practical matter discrimination cannot be eliminated by law, since such laws are easily circumvented. Discrimination can be reduced or eliminated by education and public enlightenment.

SECTION 49

Private Organizations of the Deaf

There is a strong tendency for the deaf to form clubs, organizations, and associations of various kinds. There are thousands of such organizations in this country. In forming and operating such groups, the deaf frequently have legal problems of one kind or another. The most frequent types of problems in this area are as follows:

If the group or organization is not incorporated, each member of the organization may be liable for the debts of the group. This may be an important matter if someone is seriously injured and files a suit for personal injuries. If liquor is sold at some party or social occasion, the state liquor laws may impose a heavy liability if someone is injured due to the sale. Such laws are frequently called "dramshop acts." For this reason, it is generally advisable to incorporate any large group that carries on substantial activities.

Most States have special corporation acts for not-for-profit companies granting them special consideration under property tax laws, etc. Consideration should be given to taking advantage of such laws.

If the group is incorporated, it will generally be liable for State registration fees or franchise taxes. It will also be necessary to maintain a registered agent for service of process on the club. Failure to comply with the necessary requirements may have serious consequences.

Becoming an officer or director of such groups should not be considered to be merely an honor. Officers and directors often take a heavy legal responsibility upon themselves. Such offices should not be accepted unless the individual has the time and the ability to handle properly the responsibilities involved.

Such organizations frequently have difficulty in obtaining proper insurance coverage for their operations, yet to operate without such coverage may be very risky.

The group may also be liable for State sales taxes, liquor licenses, and other State or local taxes or license fees. The Federal excise tax laws impose a tax on membership dues of over $10 per year in social clubs and organizations.

When an organization receives gifts or bequests for a particular purpose, a trust may be created with the funds in question. If the funds are then used for an improper purpose, the officers of the organization may become personally liable for such wrongful use. For example, if funds are given to the trustees of an "old peoples home for the deaf" and the home is later dissolved, the funds left on hand may not be used for other purposes, and the person who originally made the gift may be entitled to take back whatever part of the funds are left.

Particular attention should be given to having a full and adequate set of bylaws which will cover all of the practical problems that may arise during the operation of the organization. Such bylaws should not only state that there "shall be a president", etc., but should state exactly his duties and powers. This will help to eliminate disputes over the question of whether or not a certain officer has the legal right to do certain things.

SECTION 50

Legislative Matters

The general welfare of the deaf can be greatly aided by the passage of helpful legislation and by a minimum of harmful legislation. Since many people are not familiar with the legislative processes, a brief description may be useful.

The general rule is that any member of a legislative body can introduce a bill. The bill is then sent to the proper committee for consideration. If the committee is large it may then be referred to a subcommittee. The subcommittee makes it report to the entire committee. The committee then either recommends that the bill be passed or not passed. It is then sent to the legislative body, which generally follows the recommendation of the committee. When a bill has passed one house of the legislature, it is then sent to the other house, where the process is repeated. Upon passage by both houses, the bill is sent to the Governor for his signature, and upon signing it becomes a law.

During the legislative session of a single State, thousands of bills may be under consideration and it may be difficult to learn what matters are being considered and what progress is being made on a particular bill. Some States publish a digest or summary of legislation during the course of a legislative session. If such a digest is published and if it has an adequate index, it will be a simple matter to determine what bills concerning the deaf are being considered. If there is no such publication, then the best source of information may be some clerk employed by the legislature, or some well-informed member of the legislature. It should be kept in mind that bills which would affect the deaf do not always contain the word deaf. They may speak of handicapped persons or disabilities.

The deaf should be encouraged to introduce bills that they need for their protection or advancement. Likewise, they should be encouraged to help defeat legislation that would unduly harm them.

When a bill in which the deaf have a legitimate interest has been introduced into the legislature, a person who wishes to aid the passage of that bill should first seek the assistance of some member of the legislature. That member can then provide introductions to other members, particularly to the head of the committee that is considering the bill. Proper documentary material explaining the purposes of the bill can then be presented to the head of that committee and its members. If the committee plans to hold hearings speakers should be obtained to make an appearance at this hearing and to present useful material to the committee.

If the bill would be of general interest to the public, editors of newspapers can be asked to state their position in regard to the bill, and copies of such editorials can then be sent to the members of the committee. Personal visits can be made, petitions can be presented, delegations can visit key members of the committee, and any number of other activities can be carried out.

Members of a State legislature seldom have any direct knowledge of matters concerning the deaf, and they are frequently glad to be advised by professional persons, educators, doctors, lawyers, government personnel, and others who have expert knowledge. The deaf should not remain silent when their vital interests are at stake, since silence may be taken to mean indifference. They should be encouraged to take an active part in the political process. In dealing with legislatures, patience, courtesy, and persistence are the keys to success.

SECTION 51

Conclusion

The foregoing material shows that during the past 150 years a substantial body of law concerning the deaf has come into being. Some basic principles are now well established by the courts. Other principles are in the process of being formed and future years will show a continued evolution of these legal principles until they also become well established.

There are many excellent statutes now in force in certain States. Such statutes will serve as an example for the enactment of similar helpful statutes in other States. Such beneficial laws greatly aid in the advancement of the deaf.

Laws are basic tools of social progress and it is important that they should be used for social progress and achievement, and that they should not be repressive and restrictive. A great deal has been accomplished at this time, and future years will undoubtedly show further achievements.

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